TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1911

No. [illegible]49

RICHARD G. PETERS, APPELLANT,

vs.

NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, AND B. E. McLIN, TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED MAY 18, 1909.

(21,667.)

(21,667.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 29, 1910.

1 *Transcript of Record.*

United States Supreme Court.

No. ——.

RICHARD G. PETERS, Appellant,

versus

NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS and B. E. McLIN, as Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade, and the Southern Timber & Naval Stores Company, Appellees.

Appeal from United States Circuit Court, Northern District of Florida.

2 In the Circuit Court of the United States, Northern District of Florida.

RICHARD G. PETERS, a Citizen of the State of Michigan,

vs.

NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS and B. E. McLIN, as Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade, and the Southern Timber Company and Naval Stores Company, a Corporation Under the Laws of the State of Florida, all of Whom are Residents and Citizens of the State of Florida, Defendants.

Be it remembered, That on the Twenty-seventh Day of April, in the Year of Our Lord, One Thousand Nine Hundred and Seven, the Said Complainant, Richard G. Peters, by His Solicitors, Maxwell & Reeves, Filed in the Office of the Clerk of Said Court his Bill of Complaint, Which is in the Words and Figures Following, to-wit:

In the United States Circuit Court, Fifth Judicial Circuit, in and for the Northern District of Florida. In Chancery.

To the Honorable, the Judges of the United States Circuit Court for the Fifth Judicial Circuit, in and for the Northern District of Florida, in Chancery.

Richard G. Peters, of Manistee, Manistee County, Michigan, and a citizen of the State of Michigan, brings this, his bill of complaint, against Napoleon B. Broward, Governor of the State of Florida; A. C. Croom, Comptroller of the State of Florida; W. V. Knott, Treasurer of the State of Florida; W. H. Ellis, Attorney General of the State of Florida, and B. E. McLin, Commissioner of Agri-
3 culture of the State of Florida, composing and constituting the Trustees of the Internal Improvement Fund of said State,

and the Trustees of the Internal Improvement Fund of the State of Florida, all of whom are citizens of said State and reside in the City of Tallahassee, Florida; Neill G. Wade, who resides at Montbrooke, Levy County, Florida, and the Southern Timber and Naval Stores Company, a corporation organized under the laws of the State of Florida, and thereupon your orator complains and says:

I.

That he is a resident and citizen of the State of Michigan;

That the amount involved in this suit exceeds in value the sum of one hundred thousand dollars.

That the lands involved in this suit are situated in the Fifth Judicial Circuit, in and for the Northern District of Florida, viz: in the Counties of Madison, Taylor and Lafayette, in said State;

That questions arise herein and are ruled under the Constitution and laws of the United States.

II.

That by an Act of Congress approved September 28, 1850, the United States granted to the State of Florida all the swamp and overflowed lands in said State for the purposes stated in said Act; that at the time of the passage thereof, there was situated in the State of Florida several million acres of swamp and overflowed lands as designated in said Act, which remained unsold at the time of the passage thereof.

III.

That on the 6th day of January, 1855, the Legislature of Florida having passed, the Governor of the State approved "An Act to Provide for and Encourage a Liberal System of Internal Improvements in This State," under and by virtue of which said Act the legal title to the lands herein described, as well as all the swamp and overflowed lands granted to the State of Florida by the Act of Congress of September 28, 1850, became and was, for the purpose specified in said Act, vested in five Trustees, viz: the Governor, Comptroller, State Treasurer, Attorney General, and the Commissioner of Agriculture, and their successors in office, the State meanwhile owning the residuary interest and beneficial title to said lands;
4 that all the lands hereinafter described were so granted by the United States to said State under the provisions of said Act of Congress, and have been duly patented by the United States to said State in pursuance of said Act.

IV.

That afterwards, to-wit: on the 23rd day of February, 1893, F. S Babbitt, Thomas P. Denham, George Tompsett, and Comer L. Peek, duly filed, under the statutes and laws of said State, in the office of the Secretary of State of Florida, the proposed charter of a corporation to be known as "Atlantic, Suwanee River and Gulf Railroad Company," for the purpose of constructing, operating and maintaining a railroad from a point near Starke, in Bradford County,

through the Counties of Bradford, Columbia, Alachua and Levy, to some point on the Suwanee River, with spurs and extensions in said counties and in the Counties of Lafayette and Taylor, in said State, and having published due notice thereof, and otherwise complied with the statute in such case made and provided, the State of Florida duly incorporated the above named persons, their associates and successors, into a body politic and corporate in deed and in law, by and under the name of the Atlantic, Suwanee River and Gulf Railroad Company, granting unto them full authority to exercise the powers and privileges of a corporation for the purposes above stated, in accordance with the said charter and the laws of said State; that letters patent therefor were duly issued and signed by the Governor of said State on the 31st day of March, 1893, to which your orator, for greater certainty, asks leave to refer, and which when produced and proved as this Honorable Court shall direct, will more fully and at large appear.

That the said corporation accepted said charter and proceeded to construct said line of railway, partly finishing the first five-mile section thereof; that it was exercising its corporate functions and duties under said charter and constructing said railway when it became merged in and duly conveyed its said rights and interests and completed railway to the corporation hereinafter next mentioned, with the approval of the Legislature of said State.

V.

That on the 24th day of May, 1893, the Governor of the State of Florida approved an act theretofore duly passed by the Legislature of the State of Florida, entitled, "An Act to Incorporate the Atlantic, Suwanee River and Gulf Railroad, To Grant To Such Corporation Certain Privileges, and to Aid the Construction Thereof," with the knowledge that said corporation was to succeed to all the rights of the said Atlantic, Suwanee River and Gulf Railroad Company; that the said act constituted Comer L. Peek, F. L. Babbitt, Thomas P. Denham, George Tompsett and J. G. Alvarez, and their associates, successors and assigns, a body corporate, and authorized said corporation, among other things, to construct, maintain, operate and manage a railway beginning at or near the Town of Starke, Bradford County, Florida, and extending thence through the Counties of Bradford and Alachua to a point on or near the Suwanee River, between Clay Landing and Fort White, as in and by said Act, namely: Chapter 4267 of the Laws of Florida, passed at the regular session of 1893, found on page 223 to and including 229, will more fully and at large appear.

That in and by the 9th Section of said Act of May 24, 1893, it was provided as follows:

"That the State of Florida, for the purpose of aiding the construction of said railroad, its branches and extensions, hereby grants unto said company ten thousand acres of land for each mile of road it may construct, of the lands granted to the State of Florida, under the Act of Congress of September 28, 1850, and which are commonly known as the swamp and overflowed lands; said lands to be

deeded to the company by the Trustees of the Internal Improvement Fund, as fast as each five miles of said road or any of its branches are graded, cross-tied and rails laid thereon."

That in and by the 10th section of said Act of May 24, 1893, it was provided as follows:

"That upon the filing of a certificate of the completion of any five miles of said road or any of its branches, signed by the engineer and president of the said company, it shall be the duty of the Trustees of the Internal Improvement Fund to require the State Engineer, or some other competent person, to examine and inspect each five miles of road so completed, and on such person's or the State Engineer's report that the five miles are completed as certified, it shall be the duty of the Trustees of the Internal Improvement Fund to issue deeds to the said corporation, as required in the
6 foregoing section; Provided, That the said corporation, its successors and assigns, shall have the privilege of requiring and having from the Trustees of the Internal Improvement Fund, a certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to as aforesaid; and whenever and as often as the said corporation shall file with the Trustees of the Internal Improvement Fund a plot and survey of the lands located by it in pursuance of a certificate given it by the Trustees as herein provided, the said Trustees shall set apart and upon demand execute unto said corporation, its successors or assigns, a deed conveying unto it the lands described in said plot and survey, from the swamp and overflowed lands granted to the State of Florida by the Act of Congress of September 28, 1850; Provided, That nothing in said Act contained shall make the State of Florida liable by reason of any deficiency there may exist in the public lands belonging to the State under and by virtue of the Act of Congress of September 28, 1850."

That in and by the 18th section of said Act, it was among other things provided as follows:

Be it further enacted, That for each mile and part of a mile of railroad heretofore built and hereafter conveyed to the said Atlantic, Suwanee River and Gulf Railway Company, the corporation hereby enacted, it shall receive its full quota of ten thousand acres of land from the swamp and overflowed lands granted to the State of Florida by the Act of Congress passed September 28, 1850; which lands shall be conveyed to the Company in the manner and under the conditions specified in Sections 9 and 10 of this Act."

VI.

That immediately after the passage of the Act of May 24, 1893, the incorporators and their associates accepted said charter and became duly incorporated; that thereupon, therein and thereby, a contract was entered into by and between the State of Florida, as party of the first part, the Trustees of the Internal Improvement Fund of Florida, for themselves and their successors in office, as parties of the second part, and the Atlantic, Suwanee River and Gulf Railway Company, for itself, its successors and assigns, as party of the third part, wherein and whereby:

7 The State of Florida, in consideration of the construction of said railroad, specified in said charter, and in accordance with the requirements thereof, agree to deed and cause to be deeded by the Trustees of the Internal Improvement Fund of said State, ten thousand acres per mile for each and very mile of road which it, the said Atlantic, Suwanee River and Gulf Railway Company, might construct of the lands granted to the State of Florida by and under the said Act of Congress of September 28, 1850, which said lands were agreed to be deeded to the said Company by the Trustees of the Internal Improvement Fund, as fast as each five miles of said road were graded, cross-tied, and rails laid thereon; and therein and whereby:

The said Trustees of the Internal Improvement Fund of Florida agreed to supervise the construction of said road, and if found in accordance with the requirements of said charter, to approve the same, and upon the filing of a certificate of the completion of any five miles of said road, signed by the engineer and president of said company, the said Trustees of the Internal Improvement Fund of Florida would require the State Engineer, or some other competent person, acting for them, at their request, and under their instructions, to examine and inspect each five miles of road so completed, and on such person's or the State Engineer's report that the five miles were completed as certified, the said Trustees of the Internal Improvement Fund of Florida agreed to issue deeds to the said company, as required in Section 9 of said Act; and it was therein and thereby further agreed that the said Railway Company, its successors and assigns, should have the privilege of requiring and having from the said Trustees, and the said Trustees agreed to grant and give a certificate authorizing and entitling said Company to locate the lands which it might at any time have earned and become entitled to, as aforesaid; and whenever and as often as the said Railway Company, its successors and assigns, should file with the Trustees of the Internal Improvement Fund a plot and survey of the lands located by it, in pursuance of the certificate given by the Trustees as herein mentioned, the said Trustees should set apart, and upon demand execute to the said Railway Company, its successors or assigns, a deed of the lands described in said plot, or survey, from the swamp and overflowed lands granted to the State of Florida by the Act of Congress of September 28, 1850; and wherein and whereby:

8 The said Atlantic, Suwanee River and Gulf Railway Company, in consideration of the premises aforesaid, agreed to construct its line of railway from a point at or near the town of Starke, Bradford County, Florida, extending thence through the Counties of Bradford and Alachua to a point on or near the Suwanee River between Clay Landing and Fort White, in accordance with the approval of the Trustees of the Internal Improvement Fund of Florida.

That upon the *the* acceptance of said charter, said contract became, as between the State of Florida and the Atlantic, Suwanee River and Gulf Railway Company, an executed contract, and as between

itself and the Trustees of the Internal Improvement Fund of Flori
an executory one; that the provisions of the said contract and
rights thereunto accruing and belonging to the said Railway Co
pany became and were, subject to the provisions of and are ful
protected by and under the Constitution of the United States; t
the policy and action of the said State, through its executive, admi
istrative, legislative and judicial departments, thenceforth
obliged to yield to the carrying out in full and proper effect a
execution the provisions of said contract thus lawfully made a
entered into, and the obligations of which the said State, under t
Constitution of the United States, was and is forbidden to impair.

That the incorporators of the Atlantic, Suwanee River and G
Railway Company, and their associates, accepted the provisions
the Act of May 24th, 1893, and the Railway Company thereaft
with the full knowledge and approval of the State and the Trust
of the Internal Improvement Fund thereof, in reliance upon s
provisions and the inducements, representations and requireme
made by them, entered into the construction of the railroad des
nated in its charter, and completed the same at great expense; t
the construction was from time to time supervised and directed
the Trustees of the Internal Improvement Fund, made to confo
to the requirements of the State Engineer, or engineer selected
them, and was finally approved and so certified by said Engine
that pursuant to said provisions and contract so entered upon,
State and said Trustees of the Internal Improvement Fund, in c
sideration of the construction of said railroad in the manner specif
and required by said Engineer, agreed to deed and cause to be fu
conveyed to the said Atlantic, Suwanee River and Gulf Railw
Company, ten thousand acres per mile for each and every mile
railroad so constructed, of the lands granted to said State by
Act of Congress aforesaid and covered by the Act of the Legislat
of said State of January 6th, 1855, which said lands w
9 agreed to be deeded to the said Railway Company by
said Trustees of the Internal Improvement Fund as fast
each five miles of road was completed; that pursuance to said
rangement and understanding, said Railway Company construc
and completed the same in five mile sections to the satisfaction
said Trustees of the Internal Improvement Fund and said Engin
to the extent of twenty miles, and became and is entitled to
hundred thousand acres of the land aforesaid, and to have said
tract observed and specifically carried out by said Trustees of
Internal Improvement Fund.

That the country along the proposed line was uncultivated,
and unsettled, offering slight inducements or returns for the ca
invested in constructing the road; that the route was difficult;
the Atlantic, Suwannee River and Gulf Railroad Company, in
porated as set forth in Paragraph IV of this bill of complaint,
unable and unwilling to build more of the railroad without
that it would have been unprofitable; that the enterprise was
undertaken by the Atlantic, Suwannee River and Gulf Railway C
pany, incorporated as specified in Paragraph V of this bill of c

plaint, to the knowledge of the State authorities, upon the promise and understanding that it should receive aid through the appropriation of the lands mentioned therein, which were then held by the trustees of the Internal Improvement Fund for such purpose; that the construction of the railroad according to the standard imposed by the State engineer, under the direction of the trustees of the Internal Improvement Fund, was more expensive than necessary, or than it would have been but for such requirements; that along the line of said proposed railway, there was a large amount of swamp and overflowed lands which had been deeded to the State, and by the State to other railway companies, but none of it was available as aid for the construction of said railway.

VII.

That the Atlantic, Suwannee River and Gulf Railroad Company duly conveyed and transferred all its rights of every name and nature, to the Atlantic, Suwannee River and Gulf Railway Company, the corporation organized and created under the said act of May 24, 1893, which last named company therein and thereby became vested with and entitled to all the rights and benefits theretofore inuring and accruing to the said Atlantic, Suwannee River and Gulf Railroad Company, to the knowledge of and with the approval of said State and the trustees of the Internal Improvement Fund thereof; that thereafter, and between the date of the passage of said act, namely, May 24, 1893, and December 12, 1901, the said Atlantic, Suwannee River and Gulf Railway Company completed its entire main line, beginning at or near the town of Starke, in Bradford County, Florida, and extending through the Counties of Bradford and Alachua to a point on or near the Suwannee River, between Clay Landing and Fort White; that said railroad is fully completed and equipped, and in active operation, and forms a portion and is a material branch of the general system of the Seaboard Air Line Railway, connecting the Suwannee river, a navigable stream emptying into the Gulf of Mexico, with the St. John river, a navigable stream emptying into the Atlantic Ocean, thus opening traffic communication between the Atlantic Ocean, the Suwannee river, and the Gulf of Mexico, draining the territory traversed by said road, and furnishing transportation facilities for passengers, express and freight, whereby said Atlantic, Suwannee River and Gulf Railway, when completed, as aforesaid, constitutes an important feature, branch or portion of that liberal system of internal improvement of the State of Florida, which it was the policy of the act of January 6, 1855, and of the amendments thereto and modifications thereof, to encourage and to aid; that the said railway company fully completed and performed all the conditions and requirements on its part and behalf to be done and performed, under its charter and the various requirements of the trustees of the Internal Improvement Fund of Florida, and thereby became, was and is entitled to the encouragement and aid granted to it by the said act of May 24, 1893, and became and is justly entitled to ten thousand acres of land for each mile of constructed road, of the

lands granted to the State of Florida under the said Act of Congress of September 28, 1850.

VIII.

That heretofore, to-wit: on the 10th day of July, 1893, the said Atlantic, Suwannee River and Gulf Railway Company, in keeping with its contract with the trustees of the Internal Improvement Fund and with the State of Florida, having completed, duly certified to the trustees of the Internal Improvement Fund of the State of Florida, that the first five-mile section of said railroad had been duly completed in accordance with the provisions of said act of May 24, 1893, and requested the said trustees to require the State engineer, or some other competent person to examine and inspect, and report upon said five miles of completed railroad—which
11 said certificate and request are in the words and figures as follows, that is to say:

"To the Trustees of the Internal Improvement Fund of the State of Florida:

This is to certify that five miles of the railroad, which the undersigned was authorized to build and acquire under the special act of the Legislature of the State of Florida, approved May 24, 1893, have been completed and conveyed to the undersigned, according to the provisions of said act.

And your honorable body is respectfully requested to require the State engineer, or some other competent person, to examine and inspect said five miles of completed railroad.

GEO. TOMPSETT,
Chief Engineer of the Atlantic, Suwannee River and Gulf Railway.
THOS. P. DENHAM,
President of the Atlantic, Suwannee River and Gulf Railway."

which said certificate and request are found on page 8 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for the Period Beginning January 1, 1893, and Ending December 31, 1894," and which is respectfully submitted in support and as a part hereof.

IX.

That afterwards, to-wit: on the 10th day of July, 1893, upon the presentation to the trustees of the Internal Improvement Fund of the State of Florida, duly assembled and convened, of the communication and certificate referred to in the foregoing paragraph, it was upon motion, in keeping and in accordance with the terms of said contract between said Atlantic, Suwannee River and Gulf Railway Company and the trustees of the Internal Improvement Fund, duly ordered, that when the said plat of actual survey and details of construction were filed, H. S. Duval, a competent engineer, representing the said trustees, be requested to inspect the five miles of road as

constructed, and report thereon to the said trustees, and that the secretary so notify Mr. Duval—which said motion is in words and figures as follows, that is to say:—

"On motion it was ordered that when the plat of actual survey and details of construction are filed, H. S. Duval, engineer,
12 be requested to inspect the five miles of road as constructed, and report thereon to the board, and that the secretary so notify Mr. Duval."

which said motion is found on page 8 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for the Period Beginning January 1, 1893, and Ending December 31, 1894," and which is respectfully submitted in support and as a part hereof.

X.

That afterwards, to-wit: on the 15th day of July, 1893, the Atlantic, Suwannee River and Gulf Railway Company, in keeping and in accordance with the terms of said contract between the said Atlantic, Suwannee River and Gulf Railway Company and the trustees of the Internal Improvement Fund, duly filed its plat of actual survey and detail of construction, with the trustees of the Internal Improvement Fund of the State of Florida, which said detail of construction is in words and figures as follows, that is to say:

"Office of the Atlantic, Suwannee River and Gulf Railway.

STARKE, FLA., *July* 15, 1893.

Details of the Construction of the First Five-Mile Section of the Atlantic, Suwannee River & Gulf Railway.

Equipments.—The entire equipment shall be first class and shall at all times be sufficient for the prompt transportation of all passengers and freight ordinarily offering.

Road Bed.—Embankments, 12′.

Excavations, 14′.

Slope, 1½′ to 1′.

Curves.—Maximum 4° except junction with F. C. & P. R. R. at Starke, which is 8°.

Elevation of curves, 1½″ to degree of curvature.

Grade.—Maximum 40′ to mile.

Ballast.—Sand.

Gauge.—4′ 8½″.

Rail.—60 pounds to yard, steel rail.

Fastenings.—Fish plates, 4 bolts to joint.

Spikes.—9-16″ x 5½″.

Cross-ties.—Yellow pine and cypress, 7″ x 9″, 8″ & 9′, principally 9′—2640 to mile.

13 Road Crossings.—Yellow pine, 3″ plank.

Waterways.—Terra cotta tile, 12″ x 18″.

Cattle Gaps.—Timbered, open.

Bridges.—Pile trestle across canal between Rowell Lake and Sampson Lake, 96 feet. Piles 12″ heart cypress, driven with 2000 lb. hammer, 4 piles to bent, capped with 12″ x 12″ yellow heart pine, drift bolted to each pile. Spans 12 feet centre to centre; stringers 18 inches x 14 inches 24 feet, heart yellow pine fastened together at each joint with two pieces 3 inches x 14 inches 4 feet, one on each side clapped 2 inches on cap and bolted through. Ties 6 inches x 8 inches 8 feet, every fifth tie laid on edge and clapped 2 inches on stringer. Guard rail 6 inches x 8 inches, clapped 1 inch on each tie and bolted to every fifth tie.

(Signed) GEO. TOMPSETT,
Chief Engineer."

which said detail of construction is found on pages 11 and 12 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for the Period Beginning January 1, 1893, and ending December 31, 1894," and which is respectfully submitted in support and as a part hereof.

XI.

That afterwards, to-wit: on the 19th day of July, 1893, the said plat of actual survey and detail of construction were duly approved by the trustees of the Internal Improvement Fund of Florida, as in and by the action of said trustees as found on page 11 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for the Period Beginning January 1, 1893, and Ending December 31, 1894," and which is respectfully submitted in support and as a part hereof.

XII.

That on the 26th day of July, 1893, said H. S. Duval, acting for the trustees of the Internal Improvement Fund, and in accordance with their specific instructions and directions, inspected the first five-mile section of said railroad construction, made a thorough examination thereof, disapproved the same, and notified the said Atlantic, Suwannee River and Gulf Railway Company to
14 have the road aligned, ballasted and surfaced, and the ditches shaped and put to drainage; that afterwards, and before the 10th day of August, 1893, the directions and requirements so made by the trustees of the Internal Improvement Fund, through their said agent, H. S. Duval, as aforesaid, were fully complied with, at great inconvenience and expense to the said railway company.

XIII.

That afterwards, to-wit: on the 17th day of August, 1893, after reinspection duly made by the said trustees of the Internal Improvement Fund of Florida, through their duly authorized agent and representative, said H. S. Duval, the said first five-mile section of said road was found to conform in all respects with the requirements of said act, and received the approval of the said trustees of the Internal

Improvement Fund, by their agent and representative, H. S. Duval, whose report was approved and spread upon the minutes of the meeting of the trustees of the Internal Improvement Fund; which said report is found on pages 13, 14 and 15 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for the Period Beginning January 1, 1893, and Ending December 31, 1894," and which this complainant prays may be received in support and as a part hereof.

XIV.

That afterwards, to-wit: on the 9th day of December, 1893, the said Atlantic, Suwannee River and Gulf Railway Company appeared before the said trustees, and applied for a certificate, instrument or conveyance for lands due under the provisions of Sections 9, 10 and 18 of the Act of May 24, 1893, and upon proof being shown to the said trustees that the five miles of said railroad had been constructed in accordance with the provisions of said act and to the satisfaction and approval of said trustees of the Internal Improvement Fund of Florida, it was ordered that the salesman prepare certificates, instruments or conveyances, embracing in the aggregate fifty thousand (50,000) acres of land, certifying that said railway company, its successors or assigns, was entitled to locate the same and to deeds of the same when located; that said certificates, instruments or conveyances were thereupon duly issued for twelve thousand five hundred (12,500) acres each, and numbered respectively 14891 A, and 14891 B, 14891 C and 14891 D, and are, except as to number only, in words and figures as follows, that is to say:

15 "Internal Improvement Fund, State of Florida.

Certificate 14891 A. 12,500.00 acres.

Whereas, the Legislature of the State of Florida, by an act approved May 24, 1893, entitled "An Act to incorporate the Atlantic, Suwannee River and Gulf Railway Company," in the ninth section thereof did grant to the said railway company, ten thousand acres of land per mile, for each mile of railroad that said company may construct, of the lands granted to the State of Florida under the Act of Congress of September 28, 1850; and,

Whereas, under section ten of the act above mentioned, it is provided that the said Atlantic, Suwannee River and Gulf Railway Company, its successors and assigns, shall have the privilege of requiring and having from the trustees of the Internal Improvement Fund, a certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to as aforesaid. And it is further set forth in said section ten, and whenever and as often as the said corporation shall file with the trustees of the Internal Improvement Fund a plat and survey of the lands located by it in pursuance of a certificate given it by the trustees as herein provided, the said trustees shall set apart and upon demand execute to said corporation, its successors or assigns, a deed convey-

ing unto it the lands described in said plat and survey, from the swamp and overflowed lands granted to the State of Florida by the Act of Congress of September 28, 1850; and,

Whereas said corporation has furnished satisfactory evidence to said trustees that it has completed, cross-tied and ironed, and has in operation five miles of railroad, commencing at Starke, Bradford County, Florida, and running westward five miles towards a point on the Georgia Southern and Florida Southern Railroad, known as Sampson City, Bradford County, Florida, which said five miles have been inspected by the State engineer and accepted by him as having been constructed in accordance with the specifications prescribed by the said trustees of the Internal Improvement Fund; and,

Whereas, said corporation has applied for a certificate authorizing it to locate fifty thousand acres of land as hereinbefore set forth, and requested that said certificate be issued in four pieces numbered as follows: 14891 A, 14891 B, 14891 C and 14891 D.

Now, therefore, the trustees of the Internal Improvement Fund of the State of Florida, in consideration of the premises,
16 and in conformity with the act of the Legislature aforesaid, do hereby certify that the said Atlantic, Suwannee River and Gulf Railway Company is entitled to locate twelve thousand five hundred acres of land of the lands granted to the State of Florida by the Act of Congress of September 28, 1850.

In witness whereof, the said trustees have hereunto signed their names and affixed their seals and have caused to be affixed the seal of the Department of Agriculture aforesaid, at the capitol in the City of Tallahassee, on this the ninth day of December, A. D. 1893.

[SEAL.] ——— ———,
Governor.

[SEAL.] ——— ———,
Comptroller.

[SEAL.] ——— ———,
Treasurer.

[SEAL.] ——— ———,
Attorney-General.

[SEAL.] ——— ———,
Commissioner of Agriculture."

a copy of which certificates, instruments or conveyances is found on pages 13 and 19 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund for the Period Beginning January 1, 1893, and Ending December 31, 1894," and which is respectfully submitted in support and as a part hereof.

XV.

That on the 15th day of March, 1894, the engineer approved fifteen miles of said road of the Atlantic, Suwannee River and Gulf Railway Company—three sections of five miles each; which said report is found on page 24 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for

the Period Beginning January 1, 1893, and Ending Dec. 31, 1894," and which this complainant prays may be received in support and as a part hereof.

XVI.

That afterwards, to-wit: on the 24th day of March, 1894, the said Atlantic, Suwannee River and Gulf Railway Company appeared before the trustees of the Internal Improvement Fund, and applied for a certificate, instrument or conveyance for lands due
17 under the provisions of Sections 9 and 10 of the Act of May 24, 1893, and upon proof being shown to the said trustees that fifteen miles of said railway had been constructed in addition to the five miles upon which certificates, instruments or conveyances had been given December 9, 1893, in accordance with the provisions of said act and to the satisfaction and approval of said trustees of the Internal Improvement Fund of Florida, it was ordered that the salesman prepare certificates, instruments or conveyances, embracing in the aggregate one hundred and fifty thousand (150,000) acres of land, certifying that said railway company, its successors or assigns, was entitled to locate the same and to deeds of the same when located; that said certificates, instruments or conveyances were thereupon duly issued in substantially the same form as those issued on December 9, 1893, and numbered 14891 E, 14891 F, 14891 G, 14891 H, 14891 I, 14891 J, 14891 K, 14891 L and 14891 M, for one hundred and fifty thousand acres of land in the aggregate, as shown by pages 24 and 25 of the printed "Report of the Secretary of the Board of Trustees of the Internal Improvement Fund, for the Period Beginning January 1, 1893, and ending December 31, 1894," and which this complainant prays may be received in support and as a part hereof.

XVII.

That said certificates, instruments or conveyances so issued by the trustees of the Internal Improvement Fund of Florida, as aforesaid, to said Atlantic, Suwannee River and Gulf Railway Company, show that the said railway company had fully complied with all conditions precedent entitling it and its successors and assigns to locate and have deeded to it, its successors and assigns, two hundred thousand (200,000) acres of land out of the lands granted to the State of Florida by the Act of Congress of September 28, 1850; that said lands had been earned by said railway company; that all things and all conditions required to vest title of the said railway company, its successors or assigns, in and to the said lands, when selected and located, necessary to be done and performed by the said railway company, had been done and performed; that therein and thereby the said railway company, its successors and assigns, became and was entitled to two hundred thousand (200,000) acres of land out of the lands granted to the State of Florida by the Act of Congress of September 28, 1850, and the acts of the
18 Legislatures and trustees of the Internal Improvement Fund of the State of Florida.

XVIII.

That shortly after the incorporation of the Atlantic, Suwannee River and Gulf Railway Company, it entered into a contract, in good faith, with The Atlantic Lumber Company, a corporation organized under and doing business pursuant to the laws of the State of Florida, to furnish the money necessary to build, equip and operate said line of railway in consideration of a majority of the stock, bonds, lands and land grant of said railway; that said Atlantic Lumber Company furnished such money, and caused said line of railway to be completed, built and fully equipped, and placed in operation on or before the 1st day of January, 1902; that by virtue thereof, said Atlantic Lumber Company became and was entitled t a majority of said stock, bonds and lands, and land grant of said railway; that for such valuable consideration to it paid, as aforesaid, the said Atlantic, Suwannee River and Gulf Railway Company duly assigned, granted, conveyed and delivered to said Atlantic Lumber Company, its successors and assigns, the following certificates, instruments, or conveyances, viz: Nos. 14891 A, 14891 B, 14891 C, 14891 D, 14891 E, 14891 F, 14891 G, 14891 H, 14891 I, 14891 J, 14891 K, 14891 L and 14891 M, authorizing the location of lands as aforesaid, and duly notified the trustees of the Internal Improvement Fund of Florida of such transfer, whereby and by force and effect of said Act of Congress aforesaid, said contract and the acts of all the parties aforesaid, said Atlantic Lumber Company became and was vested with all the rights, powers and privileges of the Atlantic, Suwannee River and Gulf Railway Company.

That on the 18th day of March, 1896, the Atlantic, Suwannee River and Gulf Railway Company, having legally and previously selected the same, duly filed with the trustees of the Internal Improvement Fund, a map, plat and survey of the lands located by it, being the lands hereinafter particularly described in Exhibit "A," hereto subjoined, and deemed a part hereof, in pursuance of the certificates theretofore given and issued to the said railway company by the trustees of the Internal Improvement Fund, as provided by Section 10 of the charter of said railway company, and demanded a deed for such lands, and the cancellation of a like number of acres represented by said certificates; which said maps or
19 plats and survey are now on record in the office of the trustees of the Internal Improvement Fund, and contain and bear the following official recognition and indorsement:

"Filed in the office of the Commissioner of Agriculture of Florida, by C. L. Peek, attorney for the Atlantic, Suwannee River and Gulf Railway Company, March 18, 1896.

(Signed) W. B. WOMBWELL,
Com'r of Agr."

and to which, or a certified copy thereof, this complainant respectfully refers, and prays that the same may be received in support and as a part hereof.

XIX.

That afterwards, to-wit: on the 21st day of July, 1902, the said Atlantic Lumber Company duly agreed to perfect the title to and convey the greater portion of said lands to Arthur Meigs, of Jacksonville, Florida, by a certain instrument in writing duly signed, acknowledged and delivered, and thereafter duly recorded in the public records of Madison County, Florida, on the 31st day of July, 1902, in Book 0 # 2 of Deeds on page 122; and in the public records of Taylor County, Florida, on the 2nd day of August, 1902; and in the public records of Lafayette County, Florida, on the 6th day of August, 1902; that said conveyance briefly recited the said Acts of Congress and the State Legislature, as aforesaid, and the various steps and proceedings thereunder had and taken as herein set forth, by which the title to said lands had been worked out and earned; whereby and by force and effect of the recording laws of Florida, and of such Acts of Congress and of the said Acts of the Legislature of the State of Florida aforesaid, the construction of said railway, the acceptance and approval thereof, the issuance of the certificates, instruments or conveyances, the assignment of said certificates, instruments or conveyance, by said railway company to The Atlantic Lumber Company, the selection and location of the lands described in Exhibit "A," as aforesaid, the filing with the trustees of the Internal Improvement Fund of the State of Florida of a plat and survey of the lands so selected and located, the demand for the execution and delivery of a deed of the lands so described and herein described, upon the trustees of the Internal Improvement Fund as aforesaid, the due execution and recording of said contract or conveyance to said Arthur Meigs as aforesaid, full, perfect and legal notice was publicly given, binding upon all whom it might concern, and upon all these defendants, that your orator's predecessor in title was and is vested with the beneficial title and sole ownership of, in and to the lands described in said plat and survey and described in Exhibit "A" hereto attached, with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, becoming vested as of the date of the selection and location thereof, as herein described.

XX.

That your orator's predecessor in title duly selected the lands herein described, after obtaining land certificates authorizing it so to do, as hereinbefore stated, and duly, frequently and repeatedly requested and demanded a deed or conveyance therefor, from the said trustees of the Internal Improvement Fund, compliance therewith being as frequently and repeatedly refused and neglected; that before the execution and delivery of the deed by the trustees of the Internal Improvement Fund to Neill G. Wade, one of the defendants herein, as hereinafter mentioned, all the legal initiative steps and proceedings had been duly taken by your orator's predecessor in title to properly and legally locate, select and segregate out of the general mass of swamp and overflowed lands granted to the State of Florida under the Act of Congress of September 28,

1850, liable to appropriation by others or liable to different disposition thereof by the State or the trustees of the Internal Improvement Fund, to entitle your orator's predecessors in title to priority thereto as against any other person, firm or corporation, and to legally require a conveyance or deed thereof from the trustees of the Internal Improvement Fund, in case a conveyance or deed thereof be in point of law required; that after such legal initiative steps and proceedings had been duly taken, by and in behalf of your orator's predecessor in title, the equitable title and beneficial ownership to the lands herein described, became vested in your orator's predecessor in title as aforesaid; that thereafter said trustees of the Internal Improvement Fund, if they held any title, held merely the naked, legal title as trustees of and in trust for your orator's predecessor in title, its successors and assigns; that it became and was the duty of the said trustees, and their successors in office, upon the demand of your orator's predecessor in title, as hereinbefore set forth, to convey such title to it; that to attempt to convey such lands or any part thereof to any other person, firm or corporation, after the rights of your orator's predecessor had become vested
21 as hereinabove stated, was in violation of the rights of your orator's predecessor, an impairment of the contractual relations hereinabove set forth, and conveyed nothing more, if anything, than the mere naked, legal title to the grantee of said trustees, who in turn became trustee of, and held such title subject to the rights of and in trust for your orator's predecessor, its successors and assigns.

XXI.

That afterwards, to-wit: during the month of July, 1902, said trustees of the Internal Improvement Fund executed and delivered a certain deed or instrument in writing, purporting to convey the lands mentioned in Exhibit "A," hereto subjoined, with other lands, for the alleged consideration of $223,840.00, to said Neill G. Wade, one of the defendants herein, which said deed was afterwards, on the 5th day of August, 1902, recorded in the office of the clerk of the Circuit Court for the County of Taylor in Deed Book "K," at page 451, and to which, or a certified copy thereof, this complainant asks leave to refer in support and as a part hereof, and that the said Neill G. Wade and wife, on, to-wit: May 18, 1904, conveyed all of said lands to the defendant, the Southern Timber and Naval Stores Company, of which he is a member, which took said conveyance with full knowledge and notice that said Wade's title was merely colorable, and of the facts and circumstances herein set forth; that said Neill G. Wade was and is not a bona fide purchaser for value, as against the rights of your orator's predecessor, but that he took title to said lands charged with full knowledge of the rights and equities of your orator's predecessor; that before said deed was executed, delivered and accepted, your orator's predecessor became and was the rightful owner of said lands, with knowledge and notice of which the defendants were and are fully charged; that the said Neill G. Wade and the Southern Timber and Naval

Stores Company hold whatever title they took by said deeds or conveyances, in fraud of, but in trust for, your orator's predecessor in title; that prior to the execution and recording of said deed from said trustees to said Neill G. Wade, your orator's predecessor in title had taken actual possession, so far as the same could be taken of wild and uncultivated lands, placed on public record in the counties aforesaid a history of the facts out of which its rights originated and ownership vested, and posted a portion of said lands, and was in the act of posting the balance thereof when its agents were driven from the premises with threats of personal violence by agents
22 acting under the authority and in the interest of said defendant, Neill G. Wade.

That in addition to the lands herein described, there are more than two million acres of swamp and overflowed lands belonging to the State of Florida, the title to which remains in the said trustees of the Internal Improvement Fund, and which passed to and vested in said State under and by virtue of the Act of Congress of September 28, 1850.

That the lands mentioned in Exhibit "A" were chiefly valuable for the timber growing, standing and being thereon, and that the removal thereof would seriously and measurably decrease the value of said property.

XXII.

That your orator became a creditor of the said The Atlantic Lumber Company during the year 1898; that he furnished portions of the money to said company to pay the debts and liabilities incurred by it in carrying out its contract to build and equip said line of railway; that disagreements arose as to the same, the settlement or adjustment of which was repeatedly attempted, but not finally consummated until on or about the 1st day of September, 1906; that on or about the 1st day of September, 1906, The Atlantic Lumber Company, for a valuable consideration therein mentioned, did duly execute, acknowledge and deliver to your orator—the said Arthur Meigs joining therein—a certain deed of conveyance, duly selling, assigning, granting and transferring to your orator the lands herein described in Exhibit "A," hereto subjoined and deemed a part hereof, and all the hereditaments and appurtenances thereunto belonging or in anywise appertaining; which deed is now in the possession of your orator, ready to be produced and proved as this Honorable Court shall direct, and to which, when so produced and proved, your orator for greater certainty asks leave to refer, and from which the facts herein stated will fully and at large appear.

That therein and thereby your orator succeeded to and became entitled in law and equity, to all the rights of the Atlantic, Suwannee River and Gulf Railway Company and the said Atlantic Lumber Company; that the certificates above mentioned, and the lands therein described, have been duly, legally and equitably transferred to him; and he is the owner thereof, and now entitled to have the relief asked for in this bill.

23 XXIII.

That all the lands herein described were, at the date of the passage of the Act of Congress of September 28, 1850, swamp and overflowed lands, within the designation and description of said lands in said act; that the title thereto passed, by the force of said act to the State of Florida; that prior to the election and location of said lands by your orator's predecessor in title, as herein mentioned, said lands had been selected by the State of Florida as swamp and overflowed lands inuring to the State under the Act of Congress of September 28, 1850; that lists of such locations were filed in the general land office of the United States at Washington; that such selections and locations were duly approved by the Secretary of the Interior of the United States, and patents duly issued therefor to the State of Florida.

That the certificates, instruments or conveyances so given as aforesaid, and so assigned as aforesaid, were in equity a substantial conveyance of the number of acres therein described, and authorized and empowered the legal owner and holder thereof to select and locate from the swamp and overflowed lands granted to the State of Florida under the Act of Congress of September 28, 1850, the number of acres therein described, and which, when selected and located by the holders thereof in accordance with the Act of the Legislature of Florida of May 24, 1893, and what was done by all the parties thereunder, vested the title and substantial ownership of the lands so selected and located, in the holder and owner of said certificates, instruments or conveyances.

XXIV.

That your orator has been informed and believes, and therefore charges the facts to be, that the trustees of the Internal Improvement Fund, in equity, still hold the amount received from the said Neill G. Wade for the lands herein described; that the trustees of the Internal Improvement Fund, in addition to the money received from said Wade for said lands so sold to him as aforesaid, have a further large sum of money derived from the sale and disposition of this class of lands, as well as a large number of acres of said lands still in their hands or under their control, so granted to the said State under the Act of Congress of September 28, 1850, and so transferred to the trustees as herein set forth, to-wit: more than two million acres; that the said lands described in Exhibit "A," hereto subjoined, far exceed in value the amount paid therefor by

24 the said Neill G. Wade to the trustees of the Internal Improvement Fund; that the value of said lands far exceeded the amount so paid, or claimed to be paid, at the time of the purchase thereof; that the said defendant, Neill G. Wade, in entering into said bargain and sale with said trustees of the Internal Improvement Fund, obtained such low prices and terms largely because of the fact that said lands had been previously earned and selected by your orator's predecessor, and that the said defendant, Neill G. Wade, before making the purchase of said premises, had full, legal, actual and constructive notice of the rights of your orator's prede-

cessor in title in and to said lands; that the conveyance from the trustees of the Internal Improvement Fund to the said Neill G. Wade merely transferred to him the naked, legal or colorable title, which the said trustees then held; that thereafter the said Neill G. Wade held, and the said Southern Timber and Naval Stores Company now holds, whatever title he or it took, in trust for your orator's predecessor in title, and your orator; that it is the duty of the said Neill G. Wade and the said Southern Timber and Naval Stores Company to execute, acknowledge and deliver, free and clear of all encumbrance, a deed of the lands herein described, to your orator, his heirs and assigns, which in justice and equity ought to be done.

XXV.

But now so it is, may it please this Honorable Court, that the said defendants, in concert with one another, refuse to comply with their several and respective duties in the premises, and deny your orator's rights, and allege and pretend that the said act of May 24, 1893, is invalid, was never legally passed by the Legislature, and confers no rights upon your orator or his grantors;

Whereas your orator charges the contrary to be the truth, and avers that he has been informed and believes, and upon such information and belief charges the facts to be:

That the act entitled "An Act to Incorporate the Atlantic, Suwanee River and Gulf Railway Company, to Grant to said Corporation Certain Privileges and to Aid the Construction Thereof," is as duly published, printed and circulated by State authority, in the exact form, manner, title, language, substance and subject matter as introduced for passage in the House of Representatives, and finally signed by the speaker of the house and president of the senate, and approved by the Governor, save only in so far
25 as the same was amended in the body thereof by the Legislature during the passage of said bill, as shown by the journals thereof; that nothing required by the Constitution or laws of Florida to be done or performed in the passage of said act had been omitted, while all things so required had been duly performed; that through inadvertence, accident, mistake, or want or judgment on the part of the recording clerks of the house or senate, or other State official having the matter in charge, an abbreviated title, reading "A Bill to be entitled an Act to incorporate the Atlantic, Suwanee River and Gulf Railroad Company, being House Bill No. 99," was indorsed, before or at the time of its introduction, upon the back of the said bill, which was entitled on the inside, and as a part of said bill, "An Act to Incorporate the Atlantic, Suwannee River and Gulf Railway Company, to Grant to said Corporation Certain Privileges, and to Aid the Construction Thereof," which abbreviated title and number were used and employed to identify said bill through all the steps or stages of its passage in the rough and hasty entries made in the minutes of both branches of the Legislature, by the recording clerks thereof, until the enrolled copy of the bill, upon which there was no number or abbreviated title indorsed, was reported back to both branches of the Legislature by the joint committee on enroll

ment, when, at which point, and thereafter, the full, true, correct, perfect and inside title was used or employed by the recording clerks of both branches of the Legislature in the entries made by them on the respective minutes.

That after the bill passed both houses, it was duly enrolled on parchment by the clerk of the House of Representatives; that it was thereupon examined by the joint committee on enrollment consisting of two members from the senate and two from the House of Representatives, appointed as a standing committee for that purpose; that said committee carefully compared the enrollment with the engrossed bill as passed in the two houses, with full authority to correct any errors that might be discovered in the enrolled bill; and to make it conform precisely, in title and substance, with such engrossed bill; and upon such examination, said committee found such enrollment to be a full, true, correct and perfect copy of the engrossed bill, both as to the title and body thereof, except as to the abbreviated title and number indorsed upon the back of such engrossed bill, which was not, and therefore could not be deemed, treated or considered as being any part of said title or bill; whereupon such bill was duly reported back by the joint committee on enrollment in the exact form as to title, body, form and substance as subsequently signed by the speaker of the house, president
26 of the senate, and approved by the Governor, and indexed, printed, published and circulated by State authority; that the engrossed copy of the bill at the time of such comparison by said joint committee, contained the full, true and perfect title on the inside, and, as aforesaid, the short, inaccurate, mistaken and abbreviated title on the back or outside; to which engrossed copy of the said bill, showing the correct title on the inside, as aforesaid, your orator asks leave to refer, and from which, when produced and proved as this Honorable Court shall direct, the facts herein alleged will more fully and at large appear.

There was only one bill relating to the railway in question, introduced, pending or passed at said session; that there was no confusion in regard thereto; that the bill was fully and carefully considered, read at length and amended in substance by the Legislature as shown by the minutes thereof.

That cogent and conclusive evidence of the full knowledge and complete understanding and intention of the Legislature is found in the 18th section of said act of May 24, 1893, which, among other things, recites:

"That for each mile and part of a mile of railroad heretofore built and herein conveyed (by the Atlantic, Suwannee River and Gulf Railroad Company), to the Atlantic, Suwannee River and Gulf Railway Company, the corporation hereby enacted, it shall receive its full quota of ten thousand acres of land from the swamp and overflowed lands granted to the State of Florida by the Act of Congress passed September 28, 1850."

That prior to the signing of the act of May 24, 1893, in question, by the speaker of the house and the president of the senate, each presiding officer caused said bill to be read by the true and inside

title, and thereupon propounded the question whether the title of said bill should stand as read; that the title to said bill was subject to amendment, correction or confirmation up to and including that formal action of both branches of the Legislature; that it was the duty of the members of the Legislature to propose any amendment or correction of said title, or to sanction said title so read; that the failure to change the title upon such announcement, with full power and authority so to do, in the present instance was, in practice and as a matter of law, a formal legislative sanction of the title as read; that thereupon the bill, being so confirmed in substance and in title, was duly signed by the presiding officer of both branches of
27 the Legislature, approved and signed by the Governor of said State, and published by State authority under the title: "An Act to Incorporate the Atlantic, Suwannee River and Gulf Railway Company, to Grant to said Corporation Certain Privileges, and to Aid the Construction Thereof."

That it was the universal, immemorial usage and custom of both branches of the Legislature, including the session of the year 1893, and subsequently, in the keeping of the journals of both houses, to do so by making abbreviated minutes or rough draft of the proceedings through the medium of a recording clerk, a copy of which was prepared for the public printer, and a copy of this copy subsequently prepared by such recording clerk after the adjournment of the Legislature, and delivered to the Secretary of State without examination, comparison or correction; that aside from these copies of said minutes so taken, imperfectly written, unverified, uncorrected and unauthenticated, there is nothing to show that the title of said bill during its passage was other or different from its title as finally enrolled, approved, signed and officially published, and that the utter worthlessness and absolute unreliability of said copies or minutes is shown by House Resolution No. 69, introduced in the year 1905, on page 1145 of the minutes of the proceedings of the House of Representatives, as follows:

"Whereas it has been the custom to file with the Secretary of State a written copy of the daily journal of the house to be considered as the journal for that session. This copy is prepared by the recording clerk. The custom has been for this clerk to take the unfinished copy to his home at the end of the session. It usually requires months for him to finish the copy. In one instance the journal of one of the houses has never been delivered to the Secretary of State. Such copies are never examined, or corrected. They necessarily contain the errors made in copying. The Secretary of State states that they cannot be considered as reliable records."

that any infirmity or mistake arising from the use of an abbreviated title, or otherwise, was the result of the inadvertence or carelessness of clerks, and not by any design or fault of the Legislature.

That said act as passed, signed, published and circulated by State authority, received the unquestioned acquiescence of, and was acted upon by, all the parties, and became part of the State system
28 of important statutes following the act of January 6, 1855.

That from the time of the passage of the act of January 6,

1855, until after the 24th day of May, 1893, it has been the fixed, settled and continuous policy of the State of Florida, through its legislative and executive departments, to encourage and promote a liberal system of internal improvements in said State; that such was the express mandate of the Constitution of said State, which declared that "A liberal system of internal improvements being essential to the development of the resources of the country, shall be encouraged, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law the proper objects of improvements in relation to roads, canals and navigable streams, and to provide for suitable application of such funds as may be proper for such improvements."

That "railroads" were contemplated by the term "roads" in the clause of the Constitution above quoted; that thereafter the General Assembly did from time to time ascertain by law the proper objects of such improvements and provided for a suitable application of such funds as might be appropriated therefor; that the swamp and overflowed lands granted to said State by said Act of Congress of September 28, 1850, were set apart for such purpose; that within the period embraced between the dates of the passage of the act of January 6, 1855, and May 24, 1893, numerous railroads were aided and the application of the swamp and overflowed lands or internal improvements funds were from time to time appropriated therefor; that the grant of aid in the act of May 24, 1893, was in harmony and keeping with said policy of said State.

To all said acts of the Legislature and executive departments of the State, your orator asks leave to refer.

That at the time of the passage of said act of May 24, 1893, there was no swamp and overflowed lands subject to grant by the State of Florida within the lateral limits of said line of railway; that in order to provide for a like encouragement and aid provided for railroads previously chartered in said State, the legislative department provided that a floating grant for quantity should be granted to said railway created by said act of May 24, 1893, to be first earned and certificates then obtained, which must thereafter be located upon and within the larger limits or boundary of swamp and overflowed lands; that such policy continued until railroads were constructed within and throughout said State, substantially opening up to traffic and improvement the larger portion thereof; that grants were
29 from time to time made encouraging the building of canals and other improvements until at the time said policy changed, substantially all the swamp and overflowed lands within said State had been duly granted by the Legislature for various improvements, and fully earned by the construction thereof, among others the grant contained in the act of May 24, 1893.

That the people and every department of government have acquiesced in it as a piece of legislation lawfully enacted; that your orator's predecessor in title contracted with the said Atlantic, Suwanee River and Gulf Railway Company, and furnished the money necessary to build, equip, and place in operation the said railway, in reliance thereon; that such practical construction and universal

acquiescence became a part of the contract; that the alleged imperfection in this act will be found, upon examination, to extend to many of the other acts of the Legislature donating lands to railways; that all of said land has been earned, some of it received, and much of it resold to innocent purchasers; that consequently interests of vast magnitude have sprung up and flourished under the practical construction and unquestioned acquiescence in the validity of the act of May 24, 1893, and similar statutes; to which for greater certainty your orator asks leave to refer.

That under the circumstances of this case, the State, as well as the trustees of the Internal Improvement Fund, and any and all persons claiming by, through, or under them, as well as the defendants in this case, are equitably estopped by their acts, conduct, silence and acquiescence from now calling in question the validity of the act of May 24, 1893, and the *the* right to the lands granted therein and duly earned thereunder, by the construction of said railway, and duly selected and acquired by your orator's predecessor in title, and herein described.

That the trustees of the Internal Improvement Fund have hitherto entertained the belief and acted upon the theory that they absolutely controlled said swamp and overflowed lands for the purposes of the trust, without action of any kind on the part of the Legislature; that the arrangements made with the trustees, under which the road was constructed, either with or without the act of May 24, 1893, were and are, in equity, binding upon said trustees and enforcible on behalf of your orator; that the said Atlantic, Suwannee River and Gulf Railway Company, having fully performed on its part all the terms and provisions of the agreement between itself and the trustees of the Internal Improvement Fund, became and was entitled to a deed of the lands herein described, and being so entitled, the complainant is now authorized, and likewise entitled, to demand and receive a conveyance of said lands; that the trustees of the Internal Improvement Fund violated their duty under the trust in making the sale to the defendant, Neill G. Wade, who, together with said Southern Timber and Naval Stores Company now holds said lands subject to the rights of, and in trust for, your orator, as aforesaid; that therefore your orator is entitled, under the broad rules of equity, in such cases prevailing, to a specific performance of the contract so entered into and fully performed by your orator's predecessor.

That your orator is informed and believes, the said trustees of the Internal Improvement Fund and the officers of said State have lately changed their attitude towards public improvements and the disposal and use to be made of said swamp and overflowed lands, and in keeping with such changed attitude, the said trustees of the Internal Improvement Fund declined and refused to convey said lands so earned and selected by your orator's predecessor in title, or to convey to your orator's predecessor in title any other lands from the swamp and overflowed lands, in satisfaction of or on account of said land grants and land scrip or certificates; but on the contrary thereof, in divers ways and private negotiations and sales of which your orator

and the public have no notice, seek to avoid and impair the obliga tions of said grants upon said State and upon them, the said trustees and claim and pretend that they have the right to keep and retain or sell, convey and dispose of all of said swamp and overflowed land in such manner as they deem fit, and to appropriate the proceeds o such sales to such uses as they deem proper, without any reason for and to the entire exclusion of the aforesaid rights of your orator that the said trustees, claiming and pretending to act in pursuance o Section 16 of said act of January 6, 1855, of the laws of Florida and the act entitled "An Act relating to the drainage of the swamp and overflowed lands of Florida," &c., being Chapter 5377 of the Laws of Florida, approved May 27, 1905, to which your orator for greater certainty prays leave to refer, have asserted and still asser their right to sell, convey and dispose of all of said swamp and over flowed lands, and use and appropriate the proceeds of such sales for purposes other than the satisfaction of said land grants, and expressly declare and openly and notoriously assert and assume the right to sel said lands without regard to the aforesaid rights of your orator, and in violation of the rights of your orator under the Constitution of the United States.

That said act of May 27, 1905, is unconstitutional and void
31 in so far as it authorizes the said trustees to appropriate the lands and property of your orator and others in similar cir cumstances, without compensation or due process of law, and in vio lation of the provisions and guarantees of the Constitution of the United States.

That such changed attitude of said State, sought to be worked out through its legislative, executive and judicial departments of govern ment, has for its ultimate object the repudiation of its just obliga tions and the obligation of your orator, and the confiscation of the property of its creditors, of which your orator is one.

XXVI.

Forasmuch, therefore, as your orator is without remedy in the premises at and by the strict rules of the common law, and is only relievable in a Court of Equity where matters of this nature are prop erly cognizable and relievable, wherefore your orator prays:

1. That the said defendants, Napoleon B. Broward, Governor of the State of Florida; A. C. Croom, Comptroller of the State of Florida; W. V. Knott, Treasurer of the State of Florida; W. H. Ellis Attorney General of the State of Florida, and B. E. McLin, Commis sioner of Agriculture of the State of Florida, composing and consti tuting the trustees of the Internal Improvement Fund of the State of Florida, Neill G. Wade, and the Southern Timber and Naval Stores Company, and each of them, may, according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer made to the premises but not under oath, their answer on oath or affirmation hereto being hereby expressly waived.

2. That a decree of this Court may be entered, adjudging, deter mining, declaring and decreeing that your orator is the rightfu

owner in fee of the lands herein described—your orator being ready and willing and hereby offering to surrender to the Court for cancellation, or such other disposition as the Court may deem just, so much and such parts of the land certificates received from the trustees of the Internal Improvement Fund, as aforesaid, as will equal the acreage of the lands so decreed to your orator, and otherwise abide by and perform such conditions and requirements as to the Court shall seem just.

32 3. That a decree may be entered adjudging that the said defendants, Neill G. Wade, and the said Southern Timber and Naval Stores Company, hold the bare, naked, legal title in trust for your orator, and have no other rightful, substantial or beneficial title to said lands, or any part thereof.

4. That the said Neill G. Wade and the said Southern Timber and Naval Stores Company may be restrained and enjoined from selling, mortgaging, conveying, leasing or disposing of said lands, or any part thereof, thereby beclouding or attempting to becloud the title of your orator thereto, as well as from turpentining, boxing, cutting, logging, lumbering, or permitting waste on said lands, or any part thereof.

5. That the said Neill G. Wade and said Southern Timber and Naval Stores Company may be declared and decreed to be the trustees of your orator, and to hold the title to the lands herein described in trust for and as trustees of your orator, his heirs and assigns, and be compelled to execute and deliver a deed of conveyance thereof to your orator, free from all incumbrances.

6. That if, upon the incoming of the proof, it shall appear to the Court more in accordance with equity and good conscience, that the said act of May 24, 1893, and what was done under it in the earning and selection of said lands herein described, constitutes an unimpaired contract which ought to be specifically performed and said lands or other like lands conveyed to your orator, then, and in that event, that the same be decreed accordingly, your orator hereby offering to perform any terms and conditions deemed just by the Court.

7. That in the event that a decree for the specific performance for the conveyance of said lands or other like lands, be deemed impracticable or unjust, under the circumstances, then, and in that event, that a money decree be made in favor of your orator for such sum or amount, payable at such time, or times, secured in such form and manner, and chargeable to such defendant, or defendants, as to the Court shall seem proper.

8. That your orator may have such other, further or different relief in the premises as may be agreeable to equity and good conscience and to this Honorable Court shall seem meet.

33 9. That the writ of injunction, temporary and permanent, may issue under the direction and order of this Honorable Court, directed to the said Neill G. Wade and Southern Timber and Naval Stores Company, defendants herein, therein and thereby commanding, restraining and enjoining them, and each of them, to absolutely desist and refrain from selling, mortgaging, conveying, leasing or disposing of said lands, or any part thereof, as well as from

turpentining, boxing, cutting, logging, lumbering, or permitting waste on said lands, or any part thereof, until the further order of this Court.

10. That the writ of subpœna may issue, to be directed to the defendants, Napoleon B. Broward, Governor of the State of Florida; A. C. Croom, Comptroller of the State of Florida; W. V. Knott, Treasurer of the State of Florida; W. H. Ellis, Attorney General of the State of Florida, and B. E. McLin, Commissioner of Agriculture of the State of Florida, composing and constituting the trustees of the Internal Improvement Fund of said State of Florida, and Neill G. Wade, and the Southern Timber and Naval Stores Company, commanding them on a day certain, and under a penalty therein to be inserted, to be and appear before this Honorable Court, there to do, perform, comply with and abide by such orders and decrees as may be made herein.

And your orator will ever pray.

RICHARD G. PETERS,
Complainant.

MAXWELL & REEVES,
Solicitors for Complainant.

STATE OF MICHIGAN,
County of Manistee, ss:

On this 6th day of April, 1907, before me, the subscriber, a notary public in and for said county and State, personally appeared Richard G. Peters, the within complainant, who being by me duly sworn, says, that he has heard read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except — to the matters therein stated to be upon information and belief, and as to those matters, he believes it to be true.

RICHARD G. PETERS.

Subscribed and sworn to before me this 6th day of April, 1907.
[SEAL.] GEORGE J. GREER,
Notary Public, Manistee County, Michigan.

My Commission Expires Sep. 30, 1909.

34 EXHIBIT A.

Description of land. Parts of section.	Sec.	Town.	Range.
SE ¼ of NE ¼; E½ of SE ¼	33	3 N	9 E
SE ¼ of NE ¼; N ½ of SE ¼; SW ¼ of SE ¼; SW ¼	1	2 S	7 E
S ½ of SE ¼	11	" "	" "
NW ¼ of NW ¼; S ½ of NW ¼; S ½ of SE ¼; E½ of SW ¼	15	" "	" "
SW ¼ of NE ¼; NE ¼ of NW ¼; NW ¼ of SE ¼	21	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range.
NW ¼	23	2 S	7 E
S ½ of NE ¼; SW ¼ of NW ¼	33	" "	" "
W ½ of SW ¼	35	" "	" "
S ½ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼; SW ¼	1	3 S	7 E
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SE ¼	3	" "	" "
NW ¼ of NE ¼; SE ¼ of NE ¼	5	" "	" "
SW ¼ of NE ¼; SE ¼ of NW ¼	9	" "	" "
N ½ of NE ¼; SE ¼ of NE ¼; N ½ of NW ¼; N ½ of SE ¼; NW ¼ of SW ¼	11	" "	" "
NE ¼; E ½ of NW ¼	13	" "	" "
NW ¼ of NE ¼; SW ¼ of NW ¼; W ½ of SE ¼; SW ¼	15	" "	" "
E½; E½ of NW ¼; E½ of SW ¼	17	" "	" "
SE ¼ of NE ¼; SE ¼ of NW ¼; NW ¼ of SE ¼; SW ¼	21	" "	" "
W ½ of NW ¼; E ½ of NE ¼; SE ¼	23	" "	" "
NW ¼ of SW ¼; NW ¼	25	" "	" "
N ½ of NE ¼	27	" "	" "
SW ¼ of SE ¼; S ½ of SW ¼	29	" "	" "
N ½ of NE ¼	7	4 S	7 E
SW ¼ of NW ¼; NW ¼ of SW ¼	17	" "	" "
E ½; E ½ of NW ¼; E ½ of SW ¼	19	" "	" "
SW ¼ of NE ¼; W ½ of SE ¼; E ½ of SW ¼	21	" "	" "
N ½; NW ¼ of SE ¼; SW ¼	31	" "	" "
E ½ of SE ¼	35	5 S	7 E
35 SE ¼	36	5 S	7 E
E ½ of NE ¼; W ½ of NW ¼; SE ¼ of SE ¼; NE ¼ of SW ¼	1	6 S	7 E
E ½ of NE ¼	6	1 S	8 E
E ½ of SW ¼	21	" "	" "
SE ¼ of NE ¼	25	" "	" "
N ½ of NW ¼; SW ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼; N ½ of SW ¼; SW ¼ of SW ¼	27	" "	" "
E ½ of SW ¼	29	" "	" "
SW ¼ of NW ¼	35	" "	" "
N ½ of NE ¼; SE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; S ½	1	2 S	8 E
S ½	3	" "	" "
W½ of NW ¼; S½ of SE ¼; W ½ of SW¼	5	" "	" "
All	9	" "	" "
All	11	" "	" "
All	13	" "	" "
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½	15	" "	" "
SE ¼ (SW ¼)	17	" "	" "
NE ¼; NE ¼ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼; S ½ of SW ¼	19	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range.
All	21	2 S	8 E
All	23	" "	" "
All	25	" "	" "
All	27	" "	" "
NE ¼; SW ¼	29	" "	" "
E ½ of NE ¼; N ½ of SE ¼	31	" "	" "
All	33	" "	" "
All	35	" "	" "
NE ¼	7	" "	" "
All	1	3 S	8 E
All	3	" "	" "
E ½ of NE ¼; E. ½ of SE ¼; SW ¼	5	" "	" "
36			
NE ¼; SW ¼ of NW ¼; S ½ of SW ¼	7	3 S	8 E
All	9	" "	" "
All	11	" "	" "
All	13	" "	" "
All	15	" "	" "
N ½ of NW ¼; SE ¼	17	" "	" "
All	21	" "	" "
All	23	" "	" "
All	25	" "	" "
All	27	" "	" "
NE ¼	29	" "	" "
NE ¼ of NE ¼	31	" "	" "
NW ¼ of NE ¼; NW ¼; NE ¼ of SE ¼; S ½ of SE ¼; SE ¼ of SW ¼	33	" "	" "
All	35	" "	" "
All	1	4 S	8 E
N ½; SE ¼	3	" "	" "
SE ¼ of SW ¼	9	" "	" "
All	13	" "	" "
NW ¼ of NW ¼; E ½ of SE ¼	15	" "	" "
NW ¼ of NW ¼	23	" "	" "
NE ¼ of NE ¼; SE ¼ of SE ¼	11	5 S	8 E
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼ of SE ¼; W ½	13	" "	" "
SE ¼ of SE ¼	15	" "	" "
SE ¼ of SE ¼	17	" "	" "
N ½ of NE ¼	19	" "	" "
E ½ of NE ¼	21	" "	" "
All	23	" "	" "
E½ of NE ¼; E ½ of SE ¼; NW ¼; N ½ of SW ¼	25	" "	" "
SE ¼ of SE ¼	29	" "	" "
SE ¼ of SE ¼; SE ¼ of SW ¼	31	" "	" "
NE ¼; NE ¼ of SE ¼; SE ¼ of SW ¼	33	" "	" "
N ½ of NE ¼; SE ¼ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; E ½ of SE ¼	35	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range.
NE ¼; SW ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼	1	6 S	8 E
37			
All (except S ½ of SE ¼)	3	6 S	8 E
E ½ of SE ¼; W ½ of SW ¼	5	" "	" "
NE ¼; NE ¼ of SE ¼	7	" "	" "
NE ¼; NE ¼ of NW ¼; E ½ of SE ¼	9	" "	" "
S ½ of NE ¼; S ½	13	" "	" "
NE ¼ of NE ¼; W ½ of SE ¼; E ½ of SW ¼	17	" "	" "
W ½ of NE ¼; W ½ of SE ¼; S ½ of NW ¼; SW ¼	23	" "	" "
SW ¼ of SE ¼; NW ¼ of SW ¼; SE ¼ of SW ¼	25	" "	" "
SW ¼ of NW ¼; W ½ of SW ¼	33	" "	" "
NE ¼ of NW ¼	35	" "	" "
SE ¼ of SE ¼; NW ¼ of SW ¼	3	7 S	8 E
W ½ of SE ¼; W ½	11	" "	" "
SW ¼ of NW ¼	13	" "	" "
N ½ of NE ¼; SW ¼ of NE ¼; SE ¼	15	" "	" "
NW ¼ of NE ¼; SE ¼ of SE ¼	21	" "	" "
NE ¼ of NE ¼	23	" "	" "
All	25	" "	" "
S ½ of NE ¼	29	" "	" "
N ½ of SE ¼	35	" "	" "
N ½ of SE ¼; NE ¼ of SW ¼	1	8 S	8 E
NE ¼; E ½ of NW ¼	35	" "	" "
SE ¼; N ½ of SW ¼; (SE ¼ of SW ¼)	1	9 S	8 E
Lots 1 and 3	11	" "	" "
All	13	" "	" "
SW ¼ of SW ¼	19	1 S	9 E
NE ¼; SE ¼ of NW ¼; S ½	33	" "	" "
S ½ of SE ¼; S ½ of SW ¼	35	" "	" "
W ½ of NW ¼; W ½ of SW ¼	1	2 S	9 E
All	3	" "	" "
N ½ of NE ¼; SW ¼ of NE ¼; E ½ of SE ¼	5	" "	" "
All	7	" "	" "
N ½; SE ¼	9	" "	" "
38			
N ½; W ½ of SE ¼; SW ¼	11	2 S	9 E
All	15	" "	" "
All	17	" "	" "
All	19	" "	" "
All	21	" "	" "
All	29	" "	" "
All	31	" "	" "
W ½ of NE ¼; W ½	33	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range.
N ½; W ½ of SE ¼; SW ¼	7	4 S	9 E
N ½; SE ¼	19	" "	" "
NE ¼ of SE ¼; SE ¼ of SE ¼; W ½ of SW ¼	33	" "	" "
W ½ of NE ¼; NW ¼; S ½	3	5 S	9 E
SE ¼ of NE ¼; W ½ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼	5	" "	" "
NW ¼ of SW ¼	9	" "	" "
NW ¼; S ½	11	" "	" "
W ½ of SE ¼; W ½	13	" "	" "
NE ¼	15	" "	" "
All	17	" "	" "
All (except W ½ of SE ¼)	19	" "	" "
All	21	" "	" "
S ½ of NE ¼; S ½ of NW ¼	23	" "	" "
All	25	" "	" "
N ½; NW ¼ of SE ¼; W ½ of SW ¼	27	" "	" "
All	29	" "	" "
N ½; N ½ of SE ¼; SW ¼	31	" "	" "
All	33	" "	" "
All	35	" "	" "
All	1	6 S	9 E
All	3	" "	" "
E½ of NE ¼; E ½ of SE ¼; SW ¼ of NW ¼; NW ¼ of SW ¼	5	" "	" "
NW ¼; W ½ of SW ¼	7	" "	" "
All	9	" "	" "
All	11	" "	" "
All	13	" "	" "
All	15	" "	" "

39

E ½ of NE ¼; S ½	17	6 S	9 E
W ½ of NE ¼; N ½ of NW ¼; E ½ of SE ¼; W ½ of SW ¼	19	" "	" "
E ½ of NE ¼; E ½ of SE ¼	21	" "	" "
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; W ½ of SW ¼	23	" "	" "
E ½ of NE ¼; NW ¼ of NE ¼; E ½ of NW ¼; E ½ of SE ¼	25	" "	" "
E ½ of NE ¼	27	" "	" "
E ½ of NE ¼; NW ¼ of SE ¼; SW ¼ of SE ¼; S ½ of SW ¼	29	" "	" "
N ½ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; SE ¼ of SE ¼	31	" "	" "
SW ¼ of SE ¼	33	" "	" "
NE ¼ of NE ¼; E ½ of NW ¼; W ½ of SE ¼	35	" "	" "
E ½; E ½ of SW ¼	1	7 S	9 E
NE ¼; E ½ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼	5	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range.
E ½ of NE ¼; NW ¼; SE ¼ of SE ¼; SW ¼	9	7 S	9 E
SW ¼ of SE ¼	11	" "	" "
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; E ½ of SE ¼	13	" "	" "
W ½ of NW ¼; W ½ of SW ¼	15	" "	" "
N ½ of NE ¼; SW ¼ of NE ¼	17	" "	" "
All (except S ½ of NE ¼)	19	" "	" "
E ½ of NE ¼; SW ¼ of SW 1/*a*	21	" "	" "
NW ¼ of NE ¼; S ½ of NE ¼; NE ¼ of NW ¼; NW ¼ of SE ¼	23	" "	" "
S ½ of NE ¼; SE ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼	25	" "	" "
All	27	" "	" "
All	29	" "	" "
All	31	" "	" "
All	33	" "	" "
All	35	" "	" "
W ½	1	8 S	9 E
All	3	" "	" "
All	5	" "	" "
All (except SE ¼ of NE ¼; NE ¼ of SE ¼)	7	" "	" "
40			
N ½; N ½ of SE ¼; SE ¼ of SE ¼; NE ¼ of SW ¼	9	8 S	9 E
All	11	" "	" "
All (except SW ¼ of NE ¼; NW ¼ of SE ¼)	13	" "	" "
SW ¼ of NE ¼; SE ¼ of NW ¼; SE ¼; N ½ of SW ¼; SE ¼ of SW ¼	17	" "	" "
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼ of SE ¼; W ½	21	" "	" "
E ½ of NE ¼; NW ¼ of NE ¼; NW ¼ of SE ¼	23	" "	" "
E ½ of NE ¼; NE ¼ of SE ¼	25	" "	" "
NE ¼; E ½ of NW ¼; NE ¼ of SE ¼; SW ¼ of SW ¼	27	" "	" "
NE ¼; SE ¼ of NW ¼; S ½	29	" "	" "
N ½ of NE ¼; N ½ of NW ¼; S ½ of SE ¼	31	" "	" "
All	33	" "	" "
NE ¼ of NE ¼; NE ¼ of NW ¼; S ½ of SW ¼	35	" "	" "
SW ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; N ½ of SW ¼	1	9 S	9 E
All (except W ½ of NE ¼)	3	" "	" "
S ½ of SE ¼; SW ¼	5	" "	" "
All	7	" "	" "
NE ¼; W ½ of SE ¼; E ½ of SW ¼	9	" "	" "
N ½ of NW ¼	15	" "	" "
All	17	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range.
All fractional	19	9 S	9 E
NW ¼ of NE ¼; W ½ (N ½ of Lot 2; Lots 3, 4 & 5)	21	" "	" "
S ½ of NE ¼; S ½ of NW ¼; S ½	31	6 S	10 E
NW ¼; S ½	5	7 S	10 E
All	7	" "	" "
W ½	9	" "	" "
All	17	" "	" "
All	19	" "	" "
W ½ of NE ¼; W ½	21	" "	" "
NW ¼ of SW ¼; S ½ (of SW ¼)	27	" "	" "
All	29	" "	" "
41			
N ½; SE ¼; N ½ of SW ¼; SW ¼ of SW ¼	33	7 S	10 E
W ½	3	8 S	10 E
All	5	8 S	10 E
All	7	" "	" "
W ½	9	" "	" "
E ½ of NW ¼; S ½	17	" "	" "
All	19	" "	" "
SW ¼ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼	21	" "	" "
S ½ of NE ¼; W ½ of SE ¼; NW ¼ of NW ¼; SW ¼ of SW ¼	29	" "	" "
NW ¼ of NE ¼; NW ¼ of NW ¼	31	" "	" "
Lots 3 and 4	5	9 S	10 E
All (except SE ¼ of SE ¼; W ½ of SE ¼; SE ¼ of SW ¼)	7	" "	" "
NW ¼ of NW ¼	19	" "	" "
All	35	9 S	9 E
Excess of W ½	19	5 S	10 E
All	31	" "	" "
W ½ of NE ¼; W ½ of SE ¼; W ½	5	6 S	10 E
N½; N ½ of SE ¼; SW ¼ of SE ¼; SW ¼	7	" "	" "
All	17	" "	" "
All	19	" "	" "
W ½ of NE ¼; NW ¼; S ½	29	" "	" "
N ½ of NE ¼; N ½ of NW ¼	31	" "	" "
W ½ of NE ¼; NW ¼; S ½	33	" "	" "
S ½ of NW ¼; W ½ of SW ¼	3	7 S	10 E
NE ¼	5	" "	" "
E ½	9	" "	" "
W ½ of SE ¼; SE ¼ of SW ¼	11	" "	" "
E ½ of SW ¼; SW ¼ of SW ¼	13	" "	" "
All	15	" "	" "
E ½ of NE ¼; SE ¼	21	" "	" "
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½	23	" "	" "
W ½ of NE ¼; W ½ of SE ¼; W ½	25	" "	" "
N ½ of NE ¼; SE ¼ of NE ¼; NW ¼	27	" "	" "

Description of land. Parts of section.	Sec.	Town.	Range
42			
All	35	7 S	10 E
W ½	1	8 S	10 E
E ½	3	8 S	10 E
All	11	" "	" "
W ½	13	" "	" "
N ½; SE ¼; E ½ of SW ¼	15	" "	" "
E ½ of NE ¼; SE ¼	21	" "	" "
All	23	" "	" "
W ½	25	" "	" "
NE ¼ of SE ¼; S ½ of SE ¼; NW ¼ of SW ¼	27	" "	" "
E ½ of SE ¼	29	" "	" "
E ½ of NE ¼; E ½ of SE ¼	33	" "	" "
All	35	" "	" "
All	3	9 S	10 E
Lots 1, 2, 5 and 10	5	5 S	" "
E ½ of NE ¼; E ½ of SE ¼; W ¼	9	" "	" "
W ½	11	" "	" "
E ½; E ½ of NW ¼; NE ¼ of SW ¼; SE ¼ of SW ¼	15	" "	" "
Lots 1, 3, 4 and 5; S ½ of NE ¼; SE ¼	17	" "	" "
All	21	" "	" "
W ½	23	" "	" "
NE ¼	27	" "	" "
E ½ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼	29	" "	" "

(Indorsed:) No. 67. In the United States Circuit Court, Fifth Judicial Circuit, in and for the Northern District of Florida. In Chancery. Richard G. Peters, Complainant, vs. Napoleon B. Broward, A. C. Croom, W. V. Knott, W. H. Ellis, and B. E. McLin, Trustees of the Internal Improvement Fund of Florida, Neill G. Wade, and Southern Timber and Naval Stores Company, Defendants. Bill of Complaint. Filed April 27, 1907. F. W. Marsh, Clerk.

Whereupon, to-wit: on the 27th day of April, A. D. 1907, pursuant to the prayer in the foregoing bill, there issued out of the office of the Clerk of said Court a subpœna directed to the said defendants, which was thereupon delivered to the Marshal of the said District,
and was by him executed and returned into the said Clerk's
43 office, with his return indorsed thereof, which writ, together with the said return, is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to Napoleon B
Broward, Governor of the State of Florida; A. C. Croom, Comp
troller of the State of Florida; W. V. Knott, Treasurer of th
State of Florida; W. H. Ellis, Attorney-General of the State o
Florida, and B. E. McLin, Commissioner of Agriculture of th
State of Florida, composing and constituting the Trustees of th
Internal Improvement Fund of said State of Florida, and Nei
G. Wade and the Southern Timber and Naval Stores Company

We command you, and every of you, that you appear befor
the judges of the Circuit Court of the United States of America fo
the Fifth Circuit and Northern District of Florida, at Pensacola, i
said District, on the First Monday, being the third day of June, A. I
1907, to answer to a bill of complaint exhibited against you by Rich
ard G. Peters, of Manistee County, Michigan, and a citizen of th
State of Michigan, and filed in the Clerk's office of said Court, an
then and there to receive and abide by such judgment and decree a
said Court shall have considered in this behalf. And this you are no
to omit, upon pain of judgment by default being pronounced again
you.

To the Marshal of the United States to execute and return.

Witness the Honorable Melville W. Fuller, Chief Justice of th
Supreme Court of the United States and the Seal of this Court, a
the City of Pensacola, in the said District, this 27th day of Apri
A. D. 1907.

[SEAL.] F. W. MARSH, *Clerk.*

MAXWELL & REEVES,
Solicitors for Compl't.

The above named Defendants are notified that unless they sha
enter their appearance in the Clerk's office of said Court, at Pens
cola aforesaid, on or before the day to which the above is returnabl
the complaint will be taken against them as confessed and a decr
entered accordingly.

[SEAL.] F. W. MARSH, *Clerk.*

44 [Indorsed:] Civ. 636. Original No. 67. Circuit Cou
United States, Northern District of Florida. Richard G
Peters, of Manistee, Manistee County, Michigan, vs. Napoleon B
Broward, etc., The Trustees of the Internal Improvement Fund o
the State of Florida, Neill G. Wade, & the Southern Timber
Naval Stores Company. Chancery Subpœna. Returnable to Ru
Day, First Monday in June A. D. 1907. Maxwell & Reeves, Co
plainant's Solicitors. Filed May 15, 1907, F. W. Marsh, Clerk.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Napoleon B. Broward, A. C. Croom, W. V. Knott, W. H. Ellis, B. R. McLin, composing and constituting the Trustees of the Internal Improvement Fund of the State of Florida by handing to and leaving a true and correct copy thereof with each and every one of them personally at Tallahassee in said District on the 9th day of May, A. D. 1907.

T. F. McGOURIN,
U. S. Marshal,
By W. L. STRICKLAND,
Deputy W.

Filed May 15, 1907, F. W. Marsh, Clerk.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named Neill G. Wade and the Southern Timber & Naval Stores Co., of which the aforesaid Neill G. Wade is President by handing to and leaving two true and correct copies thereof with the wife of the aforesaid Neil G. Wade personally at Montbrook, in said District on the 13th day of May, A. D. 1907.

T. F. McGOURIN,
U. S. Marshal,
By R. R. RICHARD,
Deputy W.

Filed May 15, 1907, F. W. Marsh, Clerk.

* * * * * * *

45 And afterwards, to-wit: on the 1st day of June, A. D. 1907, came the Trustees, by their attorneys, and filed in the office of the Clerk of said Court, their appearance, which is in the words and figures following, to-wit:

Appearance.

In the Circuit Court of the United States in and for the Northern District of Florida.

R. G. PETERS
vs.
TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA ET AL.

N. B. Broward, Governor; A. C. Croom, Comptroller; W. H. Ellis, Attorney-General; W. V. Knott, Treasurer; B. E. McLin,

Commissioner of Agriculture, as Trustees of the Internal Improvement Fund of the State of Florida, Defendants in the above-entitled cause, by their solicitors, hereby enter their appearance in said cause.

Dated May 31st, 1907.

W. H. ELLIS,
W. S. JENNINGS,
Solicitors for Trustees of the Internal Improvement Fund of the State of Florida, Defendants.

(Indorsed:) United States Circuit Court, Northern District of Florida. R. G. Peters vs. Trustees I. I. Fund, Def'ts. Appearance. Filed Jun- 1, 1907. F. W. Marsh, Clerk; W. H. Ellis and W. S. Jennings, sol's for Def'ts.

And afterwards, to-wit, on the 3rd day of June, A. D. 1907, came Messrs. Blount & Blount & Carter, and filed in the office of
46 the Clerk of said Court the appearance of defendant, Neill G. Wade and the Southern Timber and Naval Stores Company, which appearance is in the words and figures, following, to-wit:

In the United States Circuit Court, Northern District of Florida, at Pensacola.

R. G. PETERS
vs.
N. B. BROWARD ET AL., Trustees, and NEILL G. WADE ET AL.

The Clerk of said Court will please enter our appearance for Neill G. Wade and the Southern Timber and Naval Stores Company, defendants in the above suit.

BLOUNT & BLOUNT & CARTER,
Att'ys for Defendants Neill G. Wade and Southern Timber & Naval Stores Co.

(Indorsed:) R. G. Peters vs. N. B. Broward, et al., Trustees, and Neill G. Wade, et al. Appearance. Filed Jun- 3, 1907. F. W. Marsh, Clerk; Blount & Blount & Carter, Att'ys for Def'ts. Neill G. Wade, Sou. Tim. & Nav. St. Co.

Demurrer.

And afterwards, to-wit, on the 26th day of June, A. D. 1907, was filed in the office of the Clerk of said Court, the demurrer of the defendants, Trustees, as aforesaid, which demurrer is in the words and figures following, to-wit:

In the United States Circuit Court in and for the Northern District of Florida, in Chancery.

R. G. PETERS, Complainant,

vs.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA et al., Defendants.

The joint and several demurrer of Napoleon B. Broward, Governor of the State of Florida; A. C. Croom, Comptroller of the State of Florida; W. V. Knott, Treasurer of the State of Florida; W. H. Ellis, Attorney-General of the State of Florida, and B. E.
47 McLin, Commissioner of Agriculture of the State of Florida, Trustees of the Internal Improvement Fund of the State of Florida, Defendants in the bill filed by the complainant in the above-entitled cause, on or about the — day of April, A. D. 1907.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill to be true, in such manner and form as therein set forth and alleged, demur thereto, and for cause of demurrer, show:

1. That the complainant has not in and by his said bill made or stated such a case as entitles him, in a Court of Equity, to any discovery from these defendants, or to any relief against them, as to the matters contained in said bill, or any of such matters.

2. That the said complainant has not by his said bill shown any sufficient matter of equity to entitle him to the relief sought in and by his said bill against these defendants.

3. That the said complainant's bill does not contain sufficient matter of equity whereupon this Court can ground any decree in favor of said complainant, or give said complainant any relief against these defendants.

4. That the said complainant's bill does not state facts sufficient to constitute a cause of action against these defendants.

5. That it appears by the complainant's said bill, affirmatively, that there is no privity between said complainant and these defendants to enable said complainant to call on these defendants for a conveyance of the title to swamp and overflowed lands.

6. That the Act of the Legislature set forth in the complainant's bill is void and ineffectual, so far as it relates to the swamp and overflowed lands, in that it does not provide for their drainage and reclamation.

7. That the said Act set forth in the complainant's said bill is void, and ineffectual so far as it relates to swamp and overflowed lands, because at the time mentioned in said bill, and ever since, the title to said lands referred to in said bill until the date of the conveyance by these defendants of the lands referred to in
48 said complainant's bill to Neill G. Wade, as appears by the complainant's said bill, the title to said lands was and had been in the Trustees, defendants, charged with duties in reference

to said lands, and such title was not then, at the date of said Act, in the State of Florida.

8. That said Act referred to in complainant's said bill purports to grant lands for a railroad shown by said Act to have been at that time in part already constructed and equipped and in operation.

9. That the Act referred to in complainant's bill is subject to the rights of creditors of the Trustees and to the trusts contained in Chapter 610, Laws of Florida, the main one being—the Drainage and Reclamation of the Swamp and Overflowed Lands Within the State of Florida, to the Control, Management, Sale and Application of the Lands of the Internal Improvement Fund of the State of Florida, as Aforesaid, by the Trustees, Defendants.

10. That the said Act of the Legislature referred to in complainant's bill was and is ineffectual as against these Trustees, defendants, because it was and is subject to the provisions of Section 440 of the Revised Statutes and Section 628 of the General Statutes of Florida, which reads as follows:

"Grants Subject to Trusts: Any and all grants of land other than the alternate sections within the usual six-mile limit made or that may be made by any act, shall be subject to the rights of all creditors of the Internal Improvement Fund, and to the trusts to which said Fund is applicable and subject under the Act approved January 6th, 1855, and entitled, "An Act to Provide for and Encourage a Liberal System of Internal Improvement in this State," and subject to control, management and sale and application of said fund and the lands constituting the same, by the Trustees of the Internal Improvement Fund, for the purpose of said trust under said Act."

11. That the Legislature of 1893 of the State of Florida, had no power or authority to direct the Trustees to make deeds purporting to convey the title to the swamp and overflowed lands in said trust.

12. That the complainant's bill fails to show that the Trustees of the Internal Improvement Fund joined in the issuance of
49 the alleged certificates referred to in complainant's bill, or that the Trustees had any authority to issue the alleged certificates referred to in complainant's said bill; or any authority to declare that they would make deeds to lands belonging to the Internal Improvement Fund aforesaid; or that they had any authority to bind their successors in office to carry out any such alleged certificates.

13. That the Act of the Legislature, approved May 24, 1893, entitled "An Act to Incorporate the Atlantic & Suwanee River & Gulf Railway," is inoperative, it being the Act under which complainant claims title to certain lands referred to in its bill of complaint, which Act does not and could not confer upon the complainant any vested rights, or contractual interests in the lands described in complainant's bill in pursuance thereof.

14. That if any rights became vested in complainant aforesaid by said Act, they were subject and subordinate to the control, management, sale and appropriation of the Internal Improvement Fund and the lands constituting the same by the Trustees of the Internal

Improvement Fund *and the lands constituting the same by the Trustees of the Internal Improvement Fund* as expressly provided for by Section 440 of the Revised Statutes of the State of Florida herein referred to.

15. That said bill does not allege that the trusts to which the Internal Improvement Fund of the State of Florida, is applicable, the main trust being the drainage and reclamation of the swamp and overflowed lands of the State of Florida, have been fully performed and discharged, and that all the creditors of the said fund have been satisfied and paid in full.

16. That long prior to the filing of the complainant's said bill the Trustees, defendants, sold the lands described in Exhibit "A" subjoined to complainant's said bill, to Neill G. Wade for a good and valuable consideration, namely, the full value of said lands, by good and sufficient deed of conveyance duly executed and delivered, under which said Neill G. Wade took possession. All of said matters and things the complainant was fully advised as appears by the allegations of his said bill of complaint.

17. That the said Act of the Legislature, approved May 24, 1893, entitled "An Act to Incorporate the Atlantic, Suwanee River & Gulf Railway Company," is not sufficiently broad to apprise the Legislature and the people with a land grant to be selected by the Company from the State at large, and such grant not being within the subject expressed in the title is void.

18. That Chapter 4267, referred to in complainant's bill, as bearing the title, "An Act to Incorporate the Atlantic, Suwanee River & Gulf Railway Company, and to Grant to Said Corporation Certain Privileges to Aid the Construction Thereof," is void for the reasons that it is not shown affirmatively by the Journals of the Legislature of the State of Florida, nor is it so alleged in said complainant's bill, that said Chapter 4267 was passed by the Legislature in conformity with the constitutional requirements of the State of Florida.

Wherefore, and for divers other good causes of demurrer these defendants demand judgment of this Court whether they shall be compelled to make any further or other answer to said bill or to any of the matters and things therein contained and pray to be hence dismissed with their reasonable costs in this behalf sustained.

W. S. JENNINGS,
W. H. ELLIS,
Solicitors for Defendants.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. S. JENNINGS,
Of Counsel for Defendants.

STATE OF FLORIDA,
County of Leon:

Personally appeared N. B. Broward, Governor; A. C. Croom, Comptroller; W. H. Ellis, Attorney-General; W. V. Knott, Treas-

urer, and B. E. McLin, Commissioner of Agriculture, constituting the Board of Trustees of the Internal Improvement Fund, who being duly sworn, each for himself, says that he is one of the defendants in the above entitled cause and that the foregoing demurrer is not interposed for the purpose of delay.

N. B. BROWARD.
A. C. CROOM.
W. H. ELLIS.
W. V. KNOTT.
B. E. McLIN.

51 Sworn to and subscribed before me this June, 22nd, A. D. 1907.

[SEAL.] W. M. McINTOSH, JR.,
Notary Public, Notary Public, *State of Florida.*

My Commission expires —, 1908.

(Indorsed:) United States Circuit Court, Northern District of Florida. R. G. Peters vs. Trustees, Internal Improvement Fund. Demurrer. Filed Jun- 26, 1907. F. W. Marsh, Clerk. W. H. Ellis, W. S. Jennings, Solicitors for Trustees, Def'ts.

The Demurrer of Neill G. Wade and The Southern Timber & Naval Stores Company, Defendants, to the Bill of Complaint.

And afterwards, to-wit, on the 1st day of July, A. D. 1907, came Messrs. Blount & Blount & Carter, Solicitors for Defendant-, N. G. Wade and the Southern Timber & Naval Stores Company, and filed in the office of the Clerk of said Court a demurrer to the said bill, which demurrer is in the words and figures following, to-wit:

In the United States Circuit Court, Northern District of Florida, at Pensacola.

RICHARD G. PETERS
vs.
NAPOLEON B. BROWARD et al., Trustees of the Internal Improvement Fund of Florida; Neill G. Wade, and The Southern Timber & Naval Stores Co.

These defendants, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to said bill, and for cause of demurrer show:

That the complainant hath not in and by his said bill made or stated such a cause of action as entitled him in a Court of Equity to any discovery from these defendants, or any relief against
52 them, as to the matters contained in the said bill, or any of such matters;

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants do demur thereto and humbly ask the judgment of this Court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed, with their costs and charges in this behalf most wrongly sustained.

BLOUNT & BLOUNT & CARTER,
Solicitors for Defendants.

I, William A. Blount, of counsel for the defendants, Neill G. Wade and the Southern Timber & Naval Stores Company, certify that in my opinion the foregoing demurrer is well founded in point of law.

W. A. BLOUNT,
Of Counsel for Defendants.

STATE OF FLORIDA,
County of Duval:

Before the subscriber personally appeared Neill G. Wade, known to me to be the individual described by that name, and being duly sworn, says that the foregoing demurrer is not interposed for dealy.

NEILL G. WADE.

Sworn to and subscribed before me this 13th day of June, 1907.

[SEAL.] DAVID R. WILLIAMS,
Notary Public.

My Commission expires Nov. 30, 1907.

STATE OF FLORIDA,
County of Duval:

Before the subscriber personally appeared Neill G. —— — me to be the individual described by that name and to be the President of the Southern Timber & Naval Stores Company, and, being duly sworn, says that the foregoing demurrer is not interposed for delay.

NEILL G. WADE.

Sworn to and subscribed before me this 13th day of June, 1907.

[SEAL.] DAVID R. WILLIAMS,
Notary Public.

Indorsed: Richard G. Peters vs. Napoleon B. Broward et al. Trustee- et al. Demurrer. Blount & Blount & Carter, Pensacola, Florida. Filed Jul- 1, 1907. F. W. Marsh, Clerk.

And afterwards, to-wit, upon the 1st day of July, A. D. 1907, came the complainant by his counsel, and set down the before-given demurrers for argument, which præcipe is in the words and figures following, to-wit:

In the United States Circuit Court, Fifth Judicial *District,* Northern District of Florida.

R. G. PETERS
vs.
N. B. BROWARD et al.

Now comes the complainant and sets down for argument the several demurrers filed by the defendants in the above stated case.

MAXWELL & REEVES,
Attorneys for Compl't.

(Indorsed:) R. G. Peters vs. N. B. Broward, et al. Setting Down Demurrers for Argument. Filed Jul- 1, 1907. F. W. Marsh, Clerk; Maxwell & Reeves, Law Offices, Pensacola, Fla.

And afterwards, to-wit, upon the 14th day of October, A. D. 1907, came the attorneys for the defendants, N. G. Wade and the Southern Timber & Naval Stores Company, and filed in the
53 office of the Clerk of said Court a præcipe for an order setting down the cause for a hearing, which præcipe is in the words and figures following, to-wit:

In the United States Circuit Court, Northern District of Florida, at Pensacola.

R. G. PETERS
vs.
N. B. BROWARD et al., Trustees I. I. Fund of Florida; NEILL G. WADE, and SOUTHERN TIMBER & NAVAL STORES COMPANY.

The Clerk of said Court will please enter in the order book an order setting down this cause for hearing on bill and demurrer of the defendants, Neill G. Wade and Southern Timber & Naval Stores Company, upon application of the defendants, Wade & Southern Timber & N. S. Co.

BLOUNT & BLOUNT & CARTER,
Attorneys for Neill G. Wade and Sou. Timber & Nav. Stores Co.

October 14, 1907.

(Indorsed:) R. G. Peters vs. N. B. Broward, et al. Order. Filed Oct. 14, 1907. F. W. Marsh, Clerk.

Whereupon, the clerk of said Court made and caused to be entered an order, which is in the words and figures following, to-wit, and is to be found in the new docket for the Circuit Court of the United States for the Northern District of Florida, at Pensacola, on page 11, under date of October 14, A. D. 1907.

Upon motion of counsel for complainant, the several demurrers of the defendants to the bill of complaint in this cause are hereby set down for argument.

F. W. MARSH, *Clerk.*

54 And afterwards, to-wit: upon the 11th day of January, A. D. 1908, the Judge of said Court made and caused to be entered of record an order, which is in the words and figures following, to-wit:

[*Order Sustaining Demurrer to Bill.*]

In the United States Circuit Court, Northern District of Florida, at Pensacola.

RICHARD G. PETERS

vs.

NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, B. E. McLIN, as Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade and Southern Timber & Naval Stores Company.

This cause came on to be heard upon the demurrer of the defendants to the bill of complaint, and same having been argued by counsel for the respective parties and considered by the Court, and the Court being advised of its opinion,

It is ordered that the demurrer to the said bill be and is hereby sustained, and that the complainant have leave to amend as he may be advised, his bill, on or before February 3rd, 1908. Complainant excepts to the decision and order.

January 8th, 1908.

WM. B. SHEPPARD, *Judge.*

(Indorsed:) R. G. Peters vs. N. B. Broward, et al. Order Sustaining Demurrer to Bill. Filed Jan. 11, 1908. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 4th day of February, A. D. 1908, the Judge of said Court made and caused to be entered of record an order in the said cause, which order is in the words and figures following, to-wit:

55 [*Order Dismissing Bill.*]

In the United States Circuit Court, Northern District of Florida, at Pensacola.

RICHARD G. PETERS
vs.
NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, B. E. McLin, as Trustees of the Internal Improvement Fund of Florida; Neill G. Wade, and The Southern Timber & Naval Stores Company, Defendants.

This cause having been heretofore heard upon the demurrers of the defendants to the bill of complaint, and the said demurrers having been sustained, with leave to complainant to amend as he might be advised, on or before February 3, 1908, and the complainant not having amended the said bill, and not desiring to amend further;

Therefore, it is ordered, adjudged and decreed by the Court that the said bill of complaint be and is hereby dismissed, and that the defendants recover of and from the complainant the costs of this cause, taxed at — dollars, and do have execution therefor.

The complainant excepts to this decree.

Done in open Court in the City of Pensacola, Florida, this February 4, 1908.

WM. B. SHEPPARD, *Judge.*

(Indorsed:) U. S. Circuit Court. Richard G. Peters vs. N. B. Broward, et al., Trustees, Neill G. Wade and Southern Timber & Naval Stores Co. Order Dismissing Bill. Filed Feb. 4, 1908. F. W. Marsh, Clerk. Blount & Blount & Carter, Att'ys for Def'd'ts.

And afterwards, to-wit: upon the 3rd day of April, A. D. 1909, came the complainant, by his counsel, and filed in the office of the clerk of said Court a petition for appeal of the said cause, which petition is in the words and figures following, to-wit:

56 In the United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida.

RICHARD G. PETERS, Appellant,
vs.
NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, and B. E. McLin, Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade and the Southern Timber and Naval Stores Company, Appellees.

To the judges of the above named court:

Richard G. Peters being the above named appellant conceiving himself aggrieved by the decree of this Honorable Court rendered

n the above styled cause, on the 4th day of February, A. D. 1908, ismissing the said bill of complaint, hereby appeals from said final ecree to the Supreme Court of the United States, and herewith files n assignment of errors setting up separately each error asserted and ntended to be urged in said Supreme Court, and prays that his said ppeal be allowed, and that a transcript of the record and proceedings nd papers upon which said final decree, order and judgment was nade, duly authenticated, may be sent to the said Supreme Court of he United States.

E. C. MAXWELL &
L. J. REEVES,
Attorneys for Appellant.

Indorsed: R. G. Peters vs. Napoleon B. Broward et al. Petition or appeal. Maxwell & Wilson, Law Offices, Pensacola, Florida. Filed Apr. 3, 1909. F. W. Marsh, Clerk.

7 Whereupon, to-wit: upon the 3rd day of April, A. D. 1909, to support the said petition for appeal, was filed in said Court n assignment of errors, which is in the words and figures following, o-wit:

n the United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida.

RICHARD G. PETERS, Appellant,
vs.
APOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, and B. E. McLin, Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade and The Southern Timber and Naval Stores Company, Appellees.

Now comes R. G. Peters herein and assigns as error the following:

(1.)

The order of the court sustaining the demurrer to the bill of complaint in said cause filed.

(2.)

The decree of the court dismissing the said bill of complaint.

E. C. MAXWELL &
L. J. REEVES,
Attorneys for Appellant.

Indorsed: R. G. Peters vs. Broward et al. Assignment of errors. Maxwell & Wilson, Law Offices, Pensacola, Florida. Filed Apr. 3, 1909. F. W. Marsh, Clerk.

58 Whereupon, the said Judge of said Court made and caused to be entered of record the following Order, which is in the words and figures following, to-wit:

In the Circuit Court of the United States, Fifth Judicial Circuit, Northern District of Florida.

RICHARD G. PETERS, Appellant,
vs.
NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, and E. B. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade and The Southern Timber and Naval Stores Company.

Upon motion of E. C. Maxwell and L. J. Reeves, counsel of the above named Appellant, and petition of Richard G. Peters for an order allowing appeal together with an assignment of errors, it is ordered that an appeal be, and is hereby, allowed to the Supreme Court of the United States from the final decree heretofore filed and entered herein, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the said Supreme Court of the United States. It is further ordered that the amount of the bond upon said appeal be, and is hereby, fixed at the sum of Two Hundred and Fifty ($250.) Dollars.

WM. B. SHEPPARD, *Judge.*

Indorsed: R. G. Peters vs. N. B. Broward et al. Order allowing appeal. Reeves & Watson, Lawyers, Pensacola, Fla. Filed Apr. 3, 1909. F. W. Marsh, Clerk.

59 And afterwards, to-wit: upon the 9th day of April, A. D. 1909, was filed in the office of the Clerk of said Court, the bond of the said R. G. Peters, appellant, which is in the words and figures following, to-wit:

(*Bond.*)

RICHARD G. PETERS, Appellant,
vs.
NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS, and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade and The Southern Timber and Naval Stores Company, Appellees.

Know all men by these presents that we Richard G. Peters, as principal and George A. Hart and A. J. Dovel, as sureties, are held and firmly bound unto William Howard Taft, President of the United States and his successors in office in the sum of Two hundred and fifty ($250.00) Dollars, for the payment whereof well and truly

to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Signed and sealed this 6th day of April, A. D. 1909.

The condition of this obligation is such that whereas the said principal obligor is prosecuting an appeal to the Supreme Court of the United States at Washington to reverse the decree rendered by the said Circuit Court, on the 4th day of February, A. D. 1908, in the case of Richard G. Peters vs. Napoleon B. Broward, A. C. Croom, W. V. Knott, W. H. Ellis and B. E. McLin, Trustees of the Internal Improvement Fund of the State of Florida and Neill G. Wade, and the Southern Timber and Naval Stores Company.

Now, therefore, if the principal obligor shall prosecute said appeal to effect, and answer all damage and cost if he fail to make said appeal good, then this obligatin shall be void, otherwise to remain in full force and effect.

RICHARD G. PETERS. [SEAL.]
GEORGE A. HART. [SEAL.]
A. J. DOVEL. [SEAL.]

Approved this 9 day of April, A. D. 1909.

F. W. MARSH, *Clerk.*

60 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

Georg A. Hart and A. J. Dovel, of Manistee, in said district, being du y sworn, each for himself deposes and says, that he is worth more than double the amount of the penalty of the foregoing bond, over and above all obligations and exemptions.

GEORGE A. HART.
A. J. DOVEL.

Subscribed and sworn to before me this 6th day of April, 1909.

JOHN D. H. WALLACE,
[SEAL] *Notary Public, Manistee County, Mich.*

My Commission Expires Nov. 12th, 1912.

Endorsed: R. G. Peters vs. Napoleon B. Broward et al. Bond. Maxwell & Wilson, Law Offices, Pensacola, Florida. Filed Apr. 9, 1909. F. W. Marsh, Clerk.

The Citation to the said N. B. Broward et als., which issued out of the office of the Clerk of said Court on the 3rd day of April, A. D. 1909, was delivered to the Marshal of the said District for service, and was by him executed and returned into the said Clerk's office, with his return endorsed thereon, which citation, together with the said return, is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, *ss:*

To Napoleon B. Broward, A. C. Croom, W. V. Knott, W. H. Ell and B. E. McLin, Trustees of the Internal Improvement Fund the State of Florida, and Neill G. Wade and The Southern Timb and Naval Stores Company:

You are hereby cited and admonished to be and appear at a S preme Court of the United States at Washington within 30 da from the date hereof, pursuant to an order allowing an appeal fil in the Clerk's office of the Circuit Court of the United States of t fifth judicial circuit, in and for the Northern District of Flori wherein Richard G. Peters is Appellant and you are Appellees, show cause, if any there be, why the decree rendered against the sa Appellant should not be corrected and why speedy justice should n be done to the parties in that behalf.

61 Witness the Honorable William B. Sheppard, Judge of t District Court of the United States for the Northern Distr of Florida, at Pensacola.

This 3rd day of April A. D. 1909.

WM. B. SHEPPARD,
District Judge.

Endorsed: Service accepted April 23, 1909. Blount & Blount Carter, Att'ys for N. G. Wade & & Southern Timber & Naval Sto Co. Apr. 26, '09, W. S. Jennings, Att'y for Trustees Internal I provement Fund of Florida.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I hereby certify and return that I served the annexed Citation the therein-named A. W. Gilchrist, Governor of the State of Flori by leaving a true and correct copy with him, at Tallahassee pers ally, in said District on the tenth day of April, A. D. 1909.

T. F. McGOURIN,
U. S. Marshal
By W. L. STRICKLAND, *Deputy*

Endorsed: Civ. 762. R. G. Peters vs. N. B. Broward et al.

62 UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the Circuit Court of the United States and for the Northern District of Florida and the Fifth Judicial C cuit, hereby certify that the foregoing pages, numbered from 1 to both inclusive, constitute a true and correct copy and transcript the record of proceedings and decree in the case of R. G. Peters The Trustees of the Internal Improvement Fund of the State

Florida, Neill G. Wade and the Southern Timber & Naval Stores Company, wherein the said R. G. Peters is appellant and the said defendants are appellees, as appears from the files and records of said Court.

In testimony whereof, I have hereunto set my hand and the seal of said Court, at the City of Pensacola, in said district, this the 11th day of April, A. D. 1909.

[Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH, *Clerk.*

63 UNITED STATES OF AMERICA, *ss:*

To Napoleon B. Broward, A. C. Croom, W. V. Knott, W. H. Ellis, and B. E. McLin, Trustees of the Internal Improvement Fund of the State of Florida, and Neill G. Wade and The Southern Timber and Naval Stores Company:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's office of the Circuit Court of the United States of the fifth judicial Circuit, in and for the Northern District of Florida, wherein Richard G. Peters is Appellant and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the H-norable William B. Sheppard, Judge of the District Court of the United States for the northern district of Florida at Pensacola.

This 3rd day of April, A. D. 1909.

WM. B. SHEPPARD,
District Judge.

Service accepted April 23, 1909.

BLOUNT & BLOUNT & CARTER,
Att'ys for N. G. Wade & Southern Timber & Naval Stores Co.

Apr. 26, '09.

W. S. JENNINGS,
Att'y for Trustees, Internal Improvement Fund of Florida.

64 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I hereby certify and return that I served the annexed Citation on the therein-named A. W. Gilchrist, Governor of the State of Florida, by handing to and leaving a true and correct copy thereof with him

personally at Tallahassee in said District on the tenth day of April, A. D. 1909.

T. F. McGOURIN,
U. S. Marshal,
By W. L. STRICKLAND, *Deputy.*

65 [Endorsed:] Civ. 762. R. G. Peters vs. W. B. Broward et al. Citation. Filed at 11 o'clock a. m. Apr. 3, 1909. F. W. Marsh, Clerk. Reeves & Watson, Lawyers, Pensacola, Fla.

Endorsed on cover: File No. 21,667. N. Florida C. C. U. S. Term No. 220. Richard G. Peters, appellant, vs. Napoleon B. Broward, A. C. Croom, W. V. Knott, W. H. Ellis, and B. E. McLin, trustees of the Internal Improvement Fund of the State of Florida, et al. Filed May 13th, 1909. File No. 21,667.

7

Supreme Court of the United States

OCTOBER TERM, [redacted]. 1911

No. [redacted].49

Office Supreme Court, U. S.
FILED.
FEB 16 1911
JAMES H. McKENNEY,
CLERK.

RICHARD G. PETERS,
Plaintiff and Appellant.
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and NEILL G. WADE, and the SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from United States Circuit Court, Northern District of Florida.

BRIEF FOR PLAINTIFF AND APPELLANT.

THOMAS F. McGARRY,
Solicitor for Appellant.

DREW, JACKSONVILLE 218168

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 220.

RICHARD G. PETERS,
Plaintiff and Appellant.
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and NEILL G. WADE, and the SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from United States Circuit Court, Northern District of Florida.

BRIEF FOR PLAINTIFF AND APPELLANT.

On the 24th day of May, 1893, the Legislature of the State of Florida enacted a statute published on page 223 of the Laws of Florida, of 1893, as Chapter 4267, entitled "An Act to Incorporate the Atlantic, Suwannee River and Gulf Railway, to GRANT to SUCH CORPORATION CERTAIN PRIVILEGES, and to AID THE CONSTRUCTION THEREOF," as follows:

CHAPTER 4267—[No. 153.]

AN ACT to Incorporate the Atlantic, Suwannee River and Gulf Railway Company, to Grant said Corporation certain Privileges, and to aid the Construction thereof.

Be it enacted by the Legislature of the State of Florida:

SECTION 1. That Comer L. Peek, F. L. Babbitt, Thomas P. Denham, George Tompsett, J. G. Alvarez and their associates, successors and assigns, are hereby incorporated and made a body politic under the name and style of the Atlantic, Suwannee River and Gulf Railway Company, and by that name, they and their successors and assigns, shall have the right to build, construct, maintain, manage and operate one or more lines of railway, as follows: Beginning at or near the town of Starke, in the County of Bradford, Florida, and extending from thence through the counties of Bradford and Alachua to a point on or near the Suwannee River between Clay Landing and Fort White, and a branch or branches through the counties of Levy, Columbia, Lafayette and Taylor, and with a branch or branches through the counties of Bradford, Clay and Duval, to a point on the St. Johns River; and the said company shall have the right to construct and maintain such side tracks offices, shops, stations, warehouses, wharves, bridges and buildings as may be needed for the operation of said lines of railway. Te gauge of said railroad to be standard.

SEC. 2. That the said incorporators and their successors may by such name sue and be sued, plead and be impleaded, and be authorized to adopt and use a corporate seal, and change the same at pleasure; to purchase, receive, retain and enjoy lands and tenements, hereditaments, goods, chattels and effects,

choses in action and possession; to purchase the stock in other corporations and hold and control the same, and to do all other things necessary for the full exercise of the privileges herein granted; and to sell, alien, convey, mortgage and dispose of the same; to adopt and to establish such by-laws as may be necessary for the government of said corporation, and generally to do and to perform all acts and things necessary to carry into effect fully the objects of this incorporation.

SEC. 3. That the capital stock of said company shall be six hundred thousand dollars, divided into shares of twenty-five dollars each, which capital stock may from time to time be increased to such an amount as shall give the said corporation ten thousand dollars worth of stock at par value, for each mile of completed railroad owned by it; said increase in capital stock to be made under such rules and regulations as the directors of said company may prescribe, and to be approved by a majority of the stockholders at any regular or called meeting; and the said company shall be authorized to commence business as soon as fifty thousand dollars worth of its capital stock at par value has been subscribed for.

SEC. 4. That the annual meeting of the stockholders of said company shall be held on the first Tuesday in January of each year, at which time they shall elect a board of five directors, who shall hold office for the period of one year or until their successors shall be elected and qualify, and the directors of the company shall be authorized to call special meetings of the stockholders upon such notice and at such times as they deem fit, for the transaction of any business.

SEC. 5. That the first board of directors shall consist of F. L. Babbitt, Thomas P. Denham, George Tompsett, Comer L. Peek, J. G. Alvarez, who shall

act as such until their successors shall have been elected and qualify.

SEC. 6. That the affairs of the company shall be conducted under the management and control of the board of directors, who shall on the first Tuesday in January of each year, elect a president, vice-president, secretary and treasurer, and the first board of directors shall elect all of said officers, to hold until the regular election in January, 1894. The board of directors shall have the power to fill vacancies in the board caused by death or resignation; and to fill vacancies in the offices of said company, caused by death, resignation or other causes.

SEC. 7. That no stockholder in said company shall be liable for the debts and obligations of the company to any greater extent than the amount due upon any upaid subscriptions to the capital stock of said company.

SEC. 8. That the said company shall be entitled to all the privileges, rights and immunities conferred by Sub-chapter 5, of Chapter 2, Title 3, Part 4, of the Revised Statutes of Florida, on railroad incorporations thereunder.

SEC. 9. That the State of Florida, for the purpose of aiding the construction of said railroad, its branches and extensions, hereby grants unto said company ten thousands acres of land for each mile of road it may construct, of the lands granted to the State of Florida, under the Act of Congress of September 28th, 1850, and which are commonly known as the swamp and overflowed lands, said lands to be deeded to the company by the Trustees of the Internal Improvement Fund, as fast as each five miles of said road or any of its branches are graded, crosstied and rails laid thereon.

SEC. 10. That upon the filing of a certificate of

the completion of any five miles of said road or any of its branches, signed by the engineer and president of the said company, it shall be the duty of the Trustees of the Internal Improvement Fund to require the State Engineer or some other competent person to examine and inspect each five miles of road so completed; and on such person's or the State Engineer's report that the five miles are completed as certified, it shall be the duty of the Trustees of the Internal Improvement Fund to issue deeds to the said corporation, as required by the foregoing section; *Provided,* That the said corporation, its successors and assigns, shall have the privilege of requiring and having from the Trustees of the Internal Improvement Fund a certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to as aforesaid; and whenever and as often as the said corporation shall file with the Trustees of the Internal Improvement Fund a plot and survey of the lands located by it in pursuance of a certificate given it by the Trustees as herein provided, the said Trustees shall set apart and upon demand execute unto said corporation, its successors or assigns, a deed conveying unto it the lands described in said plot and survey, from the swamp and overflowed lands granted to the State of Florida by the Act of Congress of September 28th, 1850; *Provided,* That nothing in this Act contained shall make the State of Florida liable by reason of any deficiency there may exist in the public lands belonging to the State under and by virtue of the Act of Congress of September 28th, 1850.

Sec. 11. That the said company shall have the right-of-way and privilege to construct and complete a railroad for the transportation of passengers, produce, goods and all other articles of freight, together with a telegraph line along the line of said road; and to this end shall have the right to enter upon any lands along the line of its said railway or its

branches, and appropriate the same for its right-of way to the extent of two hundred feet in width or less, and to construct its said line of railway thereupon; and for the purpose of cuttings and embankments, and for obtaining gravel and other material, and for the purpose of building depots, warehouses, wharves, and switches, to take as much land as may be necessary for the proper construction, operation and security of the road; all of said land and property to be taken and compensation to be made therefor in the way now, or which may hereafter be provided by general law; and the right-of-way is hereby given and granted through any State lands for one hundred feet on either side of the center of the roadbed of said railroad, and over and across all streams or bodies of water along the line of said railway or its branches.

SEC. 12. That the said company shall have power to receive land or other property or services in payment of subscriptions to the capital stock, at such valuations and upon such terms as the directors of the company shall determine.

SEC. 13. That the board of directors of said company shall have the right to mortgage the railroad, its franchises, roadbed, and property of every kind, including any lands granted or hereafter granted to it by the State of Florida to aid in the construction thereof; and to issue bonds secured by said mortgage or mortgages, in such sums as said board shall determine; and to sell and to dispose of the same for such consideration and on such terms as to the said board may appear best for the interest of the company.

SEC. 14. That the said company shall have the right to drain any lands now owned by it or by it subsequently acquired, as provided in Section 28, Article 16, of the Constitution of the State of Florida,

and under the conditions prescribed by Section 1563 of the Revised Statutes.

SEC. 15. That the said company, for the purpose of increasing its traffic and supplying feeders for its railroad, shall have the right to construct a canal or canals through either of the counties of Taylor, Clay, Duval, Columbia, Alachua, Suwannee, Lafayette, Bradford or Levy, for the purpose of connecting streams, lakes or other bodies of water with its said railroad or its branches, and to operate said canal or canals in connection with its said railroad, and to own canal boats, steamboats and other crafts, and to employ them in operating said canal or canals and in navigating the waters of the State, and to this end the said company shall have all the powers conferred by Sub-chapter 5, of Chapter 2, Title 3, Part 4, of the Revised Statutes of Florida, on canal companies; and the said company for the purpose of constructing said canal or canals shall have the right to enter upon and appropriate any lands public or private, lying along the course of any projected canal and appropriate the same for its right-of-way to the extent necessary for the proper construction of a canal, and to construct its said canal over and upon the same; and for the purpose of cuttings and embankments and for obtaining gravel and other material and for the purpose of constructing locks, dikes, and necessary buildings, to take as much land as may be necessary for the proper construction, operation and security of the canal, all of said land and property to be taken, and compensation to be made therefor, in the way now, or which may hereafter be provided by general law; and the right-of-way for said canal or canals is hereby granted through any State lands for one hundred feet on either side of the center of said canal; and the said corporation to the same end shall have the right to improve rivers, lakes or other water-ways, so as to make the same navigable for boats or rafts, and shall

have the sole right to navigate and make use of the streams, lakes and water-ways so improved by it, and to operate and float its boats and rafts thereon; and the said company for the purpose of improving said streams, lakes and water-ways, shall have the right to enter upon and appropriate any lands, public or private, lying along or under any streams, lakes or water-ways, and of making it navigable as aforesaid; and for the purpose of cuttings and embankments and for obtaining gravel and other material, and for the purpose of constructing locks, dikes and other necessary structures or buildings, to take as much land as may be necessary; all of said land and property to be taken, and compensation to be made therefor, in the manner prescribed by Article 6, of Chapter 11, Title 3, Part 2, of the Revised Statutes of Florida.

SEC. 16. That the said company shall have the power to engage in and carry on any lawful business of a public or private nature which may in anywise aid in the successful operation of its said railroad, or in furnishing it with traffic by the development of the resources of the country through which it runs.

SEC. 17. That the said company shall have the right to erect, maintain and operate an electric telegraph along the line of its said railroad for the transaction of a commercial telegraph business if said company shall so desire.

SEC. 18. That *whereas* the individuals herein incorporated have already incorporated themselves under the name of the Atlantic, Suwannee River and Gulf Railroad Company, by virtue of letters patent from the Governor of the State, and have begun the construction of the line of railroad contemplated by this Act, therefore, *Be it enacted*, That the corporate franchise of the last above named corporation shall be merged into the franchise of the Atlantic, Suwannee River and Gulf Railway Company, hereby incor-

porated, and the corporation so formed by such merger shall exist under and by virtue of the corporate franchise hereby granted with all the privileges granted by this Act; and all the property, rights and privileges of the said Atlantic, Suwannee River and Gulf Railroad Company are hereby vested in the Atlantic, Suwannee River and Gulf Railway Company; and, *whereas,* A portion of the said line of railroad herein provided for has already been built which will hereafter be conveyed and transferred in to the said Atlantic, Suwannee River and Gulf Railway Company; therefore, *Be it further enacted,* That for each mile and part of a mile of railroad heretofore built and hereafter conveyed to the said Atlantic, Suwannee River and Gulf Railway Company, the corporation hereby enacted, it shall receive its full quota of ten thousand acres of land from the swamp and overflowed lands granted to the State of Florida by the Act of Congress passed September 28, 1850; which lands shall be conveyed to the company in the manner and under the conditions specified in Sections 9 and 10 of this Act.

SEC. 19. That the courts of this State shall *ex-officio* take judicial notice of this Act in like manner as if it were a public act.

SEC. 20. That this Act shall take effect from and after its approval by the Governor.

Approved May 24, 1893.

The bill of complaint alleges the construction of the road in accordance with the said charter, the inspection thereof as it was built, by the Board of Trustees of the Internal Improvement Fund, with requirements made by them in order to bring the road up to the standard which would entitle the company to the land grant, a compliance with these requirements, the issuance to the company by the said Board of Trustees of certificates

for 200,000 acres of land under said grant, and the selection under said certificates of the lands described in the bill of complaint. Thereafter a succeeding Board of Trustees repudiated the transaction, refused to execute to the Railway Company or its successors deeds to the lands in accordance with the selection made under the certificates which had been issued, and sold the lands to the defendant Wade, who is alleged to have purchased them with a knowledge of the rights of the Railway Company and its successors in interest. The bill of complaint was filed in this case by the complainant, assignee of said rights, for the purpose of declaring the title conveyed to Wade to be in trust for the plaintiff and to compel the execution of conveyance of title to the said lands to him.

A similar bill had previously been filed in the Florida state court by the Atlantic Lumber Co., through whom the present complainant derived his rights, asking the same relief. In that case the Supreme Court of the state held, Neill G. Wade et al. vs. Atlantic Lumber Co., 51 Florida 632; 41 So. Rep., 72, that Sections 9 and 10 containing the land grant under which the plaintiff claims were unconstitutional under Section 16 Art. 3 of the State Constitution, as follows:

> "Each law enacted in the Legislature shall embrace one subject and matter properly connected therewith, which subject shall be briefly expressed in the title."

As enrolled and signed by the officers of the different houses and approved by the Governor and published by the state, the title was as above stated, "An Act to incorporate the Atlantic, Suwannee River and Gulf Rail-

way Co., to grant to said corporation certain privileges and to aid the construction thereof."

The Supreme Court of the State found by reference to the legislative journals, of which upon demurrer to the bill it took judicial notice, that as recited therein the title to the bill in the early stages of its passage through the legislature was "An Act to incorporate the Atlantic Suwannee River and Gulf Railway Company, being House Bill No. 90." The court thereupon held that the latter abbreviated title must be regarded as the title under which the act had been introduced and passed in the legislature, and that its validity must be considered with reference to this as a title; and further held that the title was not sufficiently full to embrace the section containing the land grant.

That decision was made with reference simply to what was found in the journals. The pleadings contained no reference to the actual facts, the whole proposition as to the shorter title being suggested for the first time after the case had reached the appellate court, the contention in the lower court as to the sufficiency of the title being based upon the full title as published, which contention was overruled by the lower state court, and the act held by it to be valid.

In order to meet the ruling of the state court, based upon the recitals of the legislative journals, the present bill in Par. 25, pp. 19 to 24 sets up the actual facts in regard to the introduction and passage of the act in question, showing that the bill as introduced had the full title as published and that the more abbreviated title stated in the journal was simply endorsed on the outside of the bill as a convenient memorandum for identification and reference and was not the title to the bill as actually introduced, read or passed.

To this bill of complaint the defendants demurred.

(See separate demurrer of Trustees of Internal Improvement Fund, pages 36 to 39, folios 46 to 50.

Separate demurrer of Neill G. Wade, pages 40 to 41, folios 51-52.)

The demurrers were sustained (p. 43, folio 54); and the plaintiff not desiring to amend, the bill was dismissed (p. 44, folio 55); whereupon the plaintiff appealed to this court.

We will first discuss the merits of the case, and then meet and answer the objections which have been raised to the granting of the relief demanded:

MERITS OF THE CASE.

I.

THE PLAINTIFF IS VESTED WITH THE EQUITABLE TITLE AND BENEFICIAL OWNERSHIP IN AND TO THE LANDS INVOLVED IN THIS LITIGATION.

The lands directly involved consist of about 110,000 acres lying in Taylor, LaFayette and Madison counties, Florida, between townships 1 to 9 South, Ranges 7 to 10 East, claimed to be owned by the plaintiff, and particularly described in the bill, to which the demurrers in question have been interposed.

These demurrers admit the facts alleged in the bill. There is substantially no dispute about the controlling facts. In brief, it is conceded that the title to these lands was in the United States in 1850; that all parties claim title under the acts of Congress of September 28, 1850,

and separate acts of the Florida legislature; that the Trustees of the Internal Improvement Fund derive their immediate title from the act of the legislature of Florida of January 6, 1855; that the plaintiff claims title to the lands in question, as successor in interest of the Atlantic, Suwannee River & Gulf Railway Company, under act of the legislature of Florida of May 24, 1893, incorporating that company, and what was done under it; which act is not in terms subject to the Internal Improvement Act.

The case on the merits, therefore, presents but a single inquiry, and that an exceedingly plain one.

Is the plaintiff the equitable owner of the 110,000 acres of land described in the bill?

The solution of this inquiry depends upon the answer given to the question:

Did the Act of the Legislature of Florida of May 24, 1893, incorporating the Atlantic, Suwannee River & Gulf Railway Company, and what was done under it, work out as against the State divestiture of the ownership of the Trustees of the Internal Improvement Fund to the lands in question, and a consequent investiture of the ownership in the plaintiff?

The title of the said act reads as follows: "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company, and to *Grant* to such Corporation certain *Privileges, and to aid the Construction thereof.*"

Section 9 provides:

> "That the State of Florida, for the purpose of aiding the construction of said railroad, its branches

and extensions, hereby grants unto said company, ten thousand acres of land for each mile of road it may construct, of the lands granted to the State of Florida, under the Act of Congress of September 28th, 1850, and which are commonly known as the swamp and overflowed lands; said lands to be deeded to the company by the Trustees of the Internal Improvement Fund, as fast as each five miles of said road or any of its branches are graded, cross-tied, and rails laid thereon."

Section 10 provides:

"That upon the filing of a certificate of the completion of any five miles of said road, or any of its branches, signed by the engineer and president of said company, it shall be the duty of the Trustees of the Internal Improvement Fund to require the state engineer, or some other competent person, to examine and inspect each five miles of road so completed, and on such person's or the state engineer's report that the five miles are completed as certified, to issue deeds to the said corporation, as required in the foregoing section, PROVIDED, that the said corporation, its successors and assigns, shall have the privilege of requiring and having from the Trustees of the Internal Improvement Fund, a certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to as aforesaid; and whenever and as often as the said corporation shall file with the Trustees of the Internal Improvement Fund a plot and survey of the lands located by it in pursuance of a certificate given it by the Trustees as herein provided, the said Trustees shall set apart, and upon demand execute unto said corporation, its successors and assigns, a deed conveying unto it the lands described in said plot and survey, from the swamp and overflowed lands granted to the State of Florida by the act of Congress of September 28, 1850; PROVIDED, that

nothing in this act contained shall make the State of Florida liable by reason of any deficiency there may exist in the public lands belonging to the state under and by virtue of the act of Congress of September 28, 1850."

It is conceded under the pleadings that the following steps, as evidenced by documentary proof, were taken by the Atlantic, Suwannee River & Gulf Railway Company, and its successors in interest, and by the Trustees of the Internal Improvement Fund, for the purpose of working a divestiture of title from the Trustees, and an investiture of title to the lands granted to the railway company under said act:

1. Incorporation of the company.

2. Acceptance of the charter.

3. Acquiring the interest of the Atlantic, Suwannee River & Gulf Railroad Company, under Section 12 of said charter.

4. Completing the first section of five miles.

5. Certificate of the first five-mile section of said road by the engineer and president of the company.

6. Executive order of the Trustees of the Internal Improvement Fund, requiring plat of actual survey and detail of construction to be filed.

7. Filing of the plat of actual survey and detail of construction.

8. Order of approval thereof by the Trustees of the Internal Improvement Fund.

9. Appointment of a state's engineer to examine and inspect such five miles of road so completed.

10. Report of the engineer appointed by the Trustees that the first five-mile section was completed as certified.

11. The application by the railway company for certificate authorizing it to locate the lands which it had earned and become entitled to by the construction of the first five-mile section.

12. Executive order of the Trustees of the Internal Improvement Fund that certificate be prepared and issued as requested.

13. The certificates issued by the Trustees in accordance with such order, and in pursuance of the act of May 24, 1893, in four pieces, aggregating 50,000 acres.

14. The certification of the completion of the second, third and fourth sections of five-miles each; the order appointing the engineer to examine and inspect the same, and the report of the state's engineer appointed by the Trustees, that the second, third and fourth sections of five miles each were completed as certified, substantially as the certification, order and report of the first five-mile section.

15. The application by the railway company for certificates authorizing and entitling it to locate the lands which it had earned and become entitled to.

16. The official order of the Trustees of the Internal Improvement Fund, directing certificates to issue as applied for.

17. The issuing of certificates aggregating 150,000 acres, in conformity with the provisions of said act.

These certificates are similar except as to number, number of acres, and section of completed road referred to. One of the certificates reads as follows:

for the officers and soldiers. * * * * * * 'Be it enacted that 25,000 acres of land shall be allotted for and given to Major-General Nathaniel Greene.' Persons have been appointed in a previous section to make particular allotments for individuals, out of this large territory reserved, and the words of this section contain a positive mandate to them to set apart 25,000 acres for General Greene. As the act was to be performed in future, the words directing it are necessarily in the future tense. 'Twenty-five thousand acres shall be allotted for and given to Major-General Nathaniel Greene.' Given when? The answer is unavoidable,—when they shall be allotted. Given how? Not by any future act; for it is not the practice of legislation to enact that a law shall be passed by some future legislature; but given by force of this act.

"It has been said that to make this an operative gift, the words 'are hereby' should have been inserted before the words 'given' so as to read 'shall be allotted for and are hereby given to,' etc. Were it even true that these words would make the gift more explicit, which is not admitted, it surely cannot be necessary now to say that the validity of a legislative grant depends, in no degree, on its containing the technical terms usual in conveyance. *Nothing can be more apparent than the intention of the legislature to order their commissioners to make the allotment, and to give the land, when allotted, to General Greene.*"

Speaking of the certificate and the allotment, the Chief Justice says:

"The allotment and survey marked out the land given by the act of 1782, and separated it from the general mass liable to appropriation by others, the general gift of 25,000 acres, lying in the territory reserved for the officers and soldiers of the line of

North Carolina, had now become a particular gift of the 25,000 acres contained in the survey."

After sweeping away the objections to the title thus vested in General Greene by the act, and the allotment and survey thereunder, Judge Marshall continues:

"It is clearly and unanimously the opinion of this court that the act of 1782, vested a title in General Greene to 25,000 acres of land, to be laid off within the bounds allotted to the officers and soldiers, and that the survey made in pursuance of that act, and returned in March, 1783, gave precision to that title, and attached it to the land surveyed. That his rights are not impaired by the acts of 1783, and the entry of the appellant, all of which are subsequent to his survey."

This is a leading case. It has stood the test of time. It has been frequently affirmed but never questioned. It is, in principle, "on all fours" with the case at bar.

1. It is a legislative floating grant of quantity in larger lateral limits, requiring identity and location to separate it from the public domain and give precision the title. It is so with the case at bar:

(a) It is a legislative grant.

(b) The grant is a floating one, of quantity.

(c) It is within larger lateral limits, namely, within the limits of land granted by the United States to Florida under the act of Congress of September 28th, 1850.

(d) It required identity and selection to make it perfect and give precision to the title, namely, either (1) by deed or deeds to be issued by the Trustees of the Internal Improvement Fund; or (2) by the filing of a plat and survey with the Trustees under and by virtue of certificates issued by said Trustees.

(2) In General Greene's case, the commissioners appointed in a previous section to make particular allotments for individuals out of the territory reserved for officer and soldiers of the line were, by a positive mandate, directed to set apart 25,000 acres for General Greene.

In this case, the Trustees appointed by a previous act were, by section 10 of the charter, directed by positive legislative mandate to execute deeds, or, in lieu thereof, to issue certificates to the railway company, under which swamp and overflowed lands reserved for such public improvement, which had been earned, and to which the railway company was entitled, might be identified, selected and located, and segregated from the public domain.

3. In General Greene's case, in pursuance of the directions of the act, the commsisioners allotted 25,000 acres of land to General Greene, and caused the tract to be surveyed and certificate returned to the proper officer of the legislature.

In the case at bar, the Trustees allotted 200,000 acres to the plaintiff's predecessor in interest, and instead of issuing deeds to the lands to which the railway company was entitled, issued certificates, and in conformity therewith, and in pursuance of the legislative act contained in the charter, the plaintiff's predecessor in interest selected the lands in question, and caused the plat and survey thereof to be duly filed with the Trustees of the Internal Improvement Fund.

4. In General Greene's case, it was held that the allotment and survey marked out the land given by the act of 1782, and separated it from the general mass liable

to appropriation by others; that the general gift of 25,000 acres lying in the territory reserved for the officers and soldiers of the line of North Carolina, had thereby become a particular gift of the 25,000 acres contained in the survey; that the legislative act of 1782 vested the title in General Greene to the 25,000 acres to be laid out within the bounds allotted to the officers and soldiers; that the survey made in pursuance of that act and returned to the office of the legislature, gave precision to that title and attached it to the lands surveyed.

In the case at bar, the selection of the lands in suit, marked out the lands given by the act of May 24, 1895, and separated them from the general mass liable to appropriation by others; that the general gift of ten thousand acres per mile of completed and accepted railway, lying in the territory reserved, namely, the swamp and overflowed lands, had now become a particular gift to the 110,000 acres of land to be selected within the swamp and overflowed lands granted to the State of Florida by the act of Congress of September 28th, 1850; that the selection and location in pursuance of that act, and the return and filing of a plat and survey thereof with the Trustees of the Internal Improvement Fund, gave precision to that title and attach to it the lands so selected.

In the case of *Lessieur vs. Price*, 12 How., 59, (decided in 1851), the plaintiff claimed under a New Madrid certificate, and the defendant under an Act of Congress granting to the State of Missouri a tract of four sections on which to locate the seat of government. The question presented was: Which party first acquired title to the lands?

February 17, 1815, 1 Statutes at Large, 211, an act was passed for the relief of the inhabitants of New

Madrid County, who suffered by earthquakes. DeLisle was one of the sufferers, and on November 26, 1817, a location certificate for 200 arpens, (an arpen being equal to 3001.25 English acres,) was obtained from the record of land titles, authorizing DeLisle to locate that quantity of any public lands within Missouri territory, the sale of which was authorized by law. Notice of the location was *improperly* delivered to the surveyor-general, June 2, 1821, and the location of survey was filed and recorded in the recorder's office, February 11, 1822.

March 6th, 1820, Congress passed an act granting "four sections of land to the state for the purpose of fixing the seat of government thereon; which said sections shall, under the direction of the legislature of said state, be located as near as may be in one body, at one time, in such townships and ranges as the legislature aforesaid may select, on any of the public lands of the United States."

June 28, 1821, the governor of Missouri notified the surveyor-general of the fact that the lands had been located by commissioners, and awaited the action of the legislature; and on the 31st day of December, 1821, the lands were accepted by the legislature.

It was insisted as against the validity of this location by the state, that the location was void because there was never any communication made by any person for the State of Missouri, to any officer of the United States having power to grant an application for or allow any location of said lands; and that such location should have been entered and recorded in the register's office of the local land district. To this contention the court says:

> "The land was granted by the act of 1820. It was a present grant, wanting identity to make it perfect, and the legislature was vested with full power to select and locate the land; and we need only here say what was substantially said by this court in the case of Rutherford vs. Greene's heirs, 2 Wheat, 196, that the act of 1820 vested the title in the State of Missouri in four sections, and that the selection made by the state legislature pursuant to Act of Congress, and the notice given of such location to the surveyor-general and the register of the local district where the lands lay, gave precision to the title, and attached to it the lands selected."

In the case of *Ledoux vs. Black,* 18 How. 473, decided in 1855, it was held that an imperfect Spanish title to lands in Louisiana, confirmed by Congress was inoperative unless the title or survey under it would enable the court to ascertain the specific boundaries of the lands. It was also held that if, before a survey in such a case, an entry is made and a patent is taken out for the lands, which conflicts with a subsequent survey of a confirmed concession, the patentee had a better title. The only question presented for consideration to the United States Court, was which party had the better right to the land in dispute. The defendant, Black, claimed title under an entry made in 1803, and a patent founded on the entry, dated in 1815, in the name of General LaFayette, for one thousand acres. The validity of this title as against the United States was not denied, but the plaintiffs claimed to have an older title by virtue of a concession to one Ursine Bouligny, dated January 10, 1776, of which the plaintiffs were assignees. This concession was a floating one, and was confirmed by the act of Congress of 1820.

Said the Court:

"Until the confirmation took place, no valid title as against the United States was vested in the grantee *to any specific tract of land.* We need only to refer to the case of DeVillemont vs. United States 13 How., 266, for authority to this effect. The cases are alike in all their features. Nor did the mere fact of confirmation tend to locate the claim and sever the land from the public domain. This could only be done by a public survey, which was not done until 1855. Up to that date the government could sell and convey a legal title to General LaFayette, regardless of the fact that Bouligny's concession existed, and might be surveyed on the lands previously granted. This question was settled by the decision in the case of Minard's heirs vs. Massey, 8 How., 301, and is not now open to controversy."

In the case of John C. Fremont vs. United States, 17 How., 542, decided in 1854:

This was a grant by the Mexican Governor of California of ten square leagues of land within a certain larger district, given in consideration of meritorious services of the grantee; and it was held that such grant conferred an equitable right to that quantity of land within that district, valid as against the Mexican Government, and consequently valid as against the United States, although the particular tract had not been designated by a certificate at the time of the cession to the United States, and although the claim was assigned to and prosecuted in the United States courts by Colonel Fremont, the assignee; and a part of the land to which this title is to attach, must be ascertained by survey made under the authority and in the mode provided by the laws of the United States.

Mr. Justice Taney, in delivering the opinion of the Court, says:

> "The words of the grant are positive and plain. They purport to convey to him a present and immediate interest. * * * * * * It is argued that the description is so vague and uncertain that nothing passed by the grant; and that he had no vested interest until the land was surveyed and the part intended to be granted severed by lines or known boundaries from the public domain. But this objection cannot be maintained. It is true that if any other person within the limits where the quantity granted to Alvardo was to be located, had afterwards obtained a grant from the government by specific boundaries, before Alvardo had made his survey, the title of the latter grantee could not be impaired by any subsequent survey of Alvardo.
>
> "As between the individual claimants from the government, the title of a party who had obtained a grant for the specific land, would be a superior and a better one. For, by the general grant to Alvardo, the government did not bind itself to make no other grant within the territory described, until after he had made his survey. But as between him and the government, he had a vested interest in the quantity of land mentioned in the grant. The right to so much land, to be afterwards laid off by official authority, in the territory described, passed from the government to him by the execution of the instrument granting it."

After quoting from and commenting upon the case of Rutherford vs. Greene's Heirs, the learned Judge continues:

> "The principles decided in this case appear to the court to be conclusive as to the legal effect of the grant to Alvardo. It recognizes as a general principle of justice and municipal law, that such a grant

INTERNAL IMPROVEMENT FUND STATE OF FLORIDA

Certificate No. 14891C. 12500.00 acres.

WHEREAS, the legislature of the State of Florida, by an act approved May 24th, 1893, entitled "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company," in the ninth section thereof, did grant to the said railway company ten thousand acres of land per mile for each mile of railroad that said company may construct of the lands granted to the State of Florida under Act of Congress of September 28th; and

WHEREAS, under section ten of the act above mentioned, it is provided that said Atlantic, Suwannee River & Gulf Railway Company, its successors and assigns, shall have the privilege of requiring and having from the Trustees of the Internal Improvement Fund a certificate authorizing and entitling it to locate the lands which it may at any time have earned, and become entitled to as aforesaid; and it is further set forth in section ten, "And whenever and as often as the said corporation shall file with the Trustees of the Internal Improvement Fund a plat and survey of the lands located by it in pursuance of a certificate given it by the Trustees as herein provided, the said Trustees shall set apart and upon demand execute unto said corporation, its successors or assigns, a deed conveying unto it the lands described in said plat and survey, from the swamp and overflowed lands granted to the state of Florida, by the Act of Congress of September 28th, 1850; and

WHEREAS, said corporation has furnished satisfactory evidence to said Trustees that it has completed, cross-tied, and ironed, and has in operation five miles of railroad, commencing at Starke, Bradford County, Florida, and running westward five miles towards a point on the Georgia Southern &

Florida Railway, known as Sampson City, Bradford County, Florida, which five miles have been inspected by the state engineer and accepted by him as having been constructed in accordance with the specifications prescribed by the said Trustees of the Internal Improvement Fund; and

WHEREAS, said corporation has applied for a certificate authorizing it to locate fifty thousand acres of land as hereinbefore set forth, and requested that said certificate be issued in four pieces numbered as follows: 14891 A, 14891 B, 14891 C, 14891 D;

Now Therefore, The Trustees of the Internal Improvement Fund of the State of Florida, in conconsideration of the premises and in consideration of the act of the legislature aforesaid, do hereby certify that the said Atlantic, Suwannee River & Gulf Railway Company is entitled to locate Twelve Thousand Five Hundred acres of land of the lands granted to the State of Florida by the act of Congress of September 28th, 1850.

In Testimony Whereof, the said Trustees have hereunto signed their names and affixed their seals, and have caused to be affixed the seal of the Department of Agriculture aforesaid, at the capitol in the city of Tallahassee, on this the Ninth day of December, A. D. 1893."

(Signed and sealed.)

18. The assignment of the Atlantic, Suwannee River & Gulf Railway Company of said certificates to the Atlantic Lumber Company, subsequently acquired by the plaintiff.

19. The completion of the entire road from terminus to terminus, December 12th, 1901.

20. The filing with the Trustees of the Internal Improvement Fund of a plat and survey of the lands in question, located by the Atlantic Lumber Company in

pursuance of such certificates, and demand for a deed, May 29, 1902.

The certificates issued by the Trustees of the Internal Improvement Fund show that the Atlantic, Suwannee River & Gulf Railway Company had fully complied with all conditions precedent entitling it and its successors and assigns to locate and have deeded to it or them, said two hundred thousand acres of land out of the lands granted to the State of Florida under the Act of Congress of September 28th, 1850.

The pleadings admit that for and in behalf of the Atlantic Lumber Company and the present appellant, as successors in title to the Atlantic, Suwannee River & Gulf Railway Company, the said railway company selected and located lands in question, before the selection or location by any other person or corporation, to-wit: March 18th, 1896, and duly filed with the Trustees of the Internal Improvement Fund, as required by said act, a plat and survey of the lands so selected and located by it in pursuance of certificate issued by the Trustees of the Internal Improvement Fund, and demanded of said Trustees a deed conveying the lands so earned, so selected and located; that the Trustees denied the request, whereupon the plaintiff's predecessor in title took possession of the lands described in "Exhibit A" of said bill, being 80,500 acres of said lands, and plaintiff is now in the actual possession thereof, exercising full acts of ownership; that the lands so selected and located were lands granted to the State of Florida under act of Congress of September 28th, 1850; that prior to such selection and location of said lands, such lands had been selected by the State of Florida as swamp and overflowed lands inuring to the state under the act of Congress of September 28th,

1850, and patents duly issued to the State of Florida therefor:

In view of these facts, we confidently affirm that:

The Act of the Legislature of the State of Florida of May 24, 1893, constituted a Present Grant of the Lands included within its limits to take effect when earned and identified by a Deed from the Trustees of the Internal Improvement Fund, or upon their selection and location under Certificate issued by said Trustees in pursuance of said Act.

It will be first observed that a legislative grant does of itself *proprio vigore* pass to the grantees all the estate which government or state had in the subject matter of the grant, except what was expressly excepted.

Godfrey vs. Beardsley, 2 McLean, 412.
United States vs. Percheman, 7 Peters, 51.
Ladiga vs. Roland, 2 How., 521.
United States vs. Brooks, 10 How., 442.
Lessieur vs. Price, 12 How., 59.

It will be next observed that the phraseology of the act of May 24th, 1893, imparts a present conveyance to a floating grant within the swamp land grant limits, requiring but to be earned and identified either (1) by deed, or (2) by location, under certificate issued by the Trustees, under said act, to vest the title. The words are:

> "That the State of Florida, for the purpose of aiding the construction of said railroad, its branches and extensions, *hereby grants unto said company* ten thousand acres of land for each mile of road it may construct. * * * Said lands to be deeded to the company by the Trustees of the Internal Improvement Fund as fast as each five miles

> of said road, or any of its branches, are graded and cross-tied, and the rails laid thereon."

And further on, in the next section, the lands earned are required to be deeded to the said corporation upon the incoming of the report of the engineer in charge; and further on it speaks of the corporation being entitled to

> "A certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to, as aforesaid."

It then provides for the location of the land by the corporation, and then in positive and unmistakable language continues:

> "And whenever and as often as the said corporation shall file with the Trustees of the Internal Improvement Fund a plat and survey of the lands located by it in pursuance of a certificate given by the Trustees as herein provided, the said trustees shall set apart, and upon demand execute unto said corporation, its successors and assigns, a deed conveying unto it the lands described in said plat and survey."

No court is at liberty to subject these sovereign legislative grants, which more partake of the nature of treaty cessions than of individual bargaining, to the definitions and refinements which the rules of municipal law apply to the grants and conveyances from man to man.

When the state conveys by an act of the legislature that which constitutes its deed at the same time constitutes the law which defines the right of estate, and stamps it with whatever character it possesses, and so long as the state is only dealing with its own, the right or estate granted, whether anomalous or unprecedented,

or otherwise, will be entitled to recognition and effect for just what it appears and was intended to be.

> "The grant of the individual must generally operate at once, if it ever does, but the grant of a sovereign is governed by different principles, and must have operation according to its extent, whatever that may be. It must have a continuous operation so as to transfer different parcels of land from time to time, as the sovereign may become vested with the title thereof, if such appears to be its purpose."
>
> Per Cooley, Judge, in Ballou vs. O'Brien, 20 Mich., 304, text 321.

As was said in substance by the Supreme Court of Michigan in the case of J. L. & S. R. R. Co. vs. Davidson, 65 Mich, 416:

> "A legislative grant differs from a grant of a private person in that it is both a grant and a law, and, as such, the intent of the law is to be kept in view, and its purpose effectuated whenever the subject matter of the grant comes in controversy; and that construction must be placed upon it which will preserve and carry out the object of the legislature, however such construction may conflict with the principles of the common law to prevent the attaching of equities which would spring from transaction with private parties."

A legislative grant operates as a law as well as a transfer of the property, and has such force as the intent of the legislature requires.

> Schulenberg vs. Harriman, 21 Wall., 44 (22:551.)
> Missouri Pac. R. R. Co. vs. Kansas Pac. R. R. Co., 99 U. S., 491.
> Kansas Pac. R. R. Co. vs. Dunmeyer, 113 U. S., 629.

St. Paul etc. R. R. Co. vs. Greenhalgh, 26 Fed. Rep., 563.
Hall vs. Bissell, 101 U. S., 503.
Nash vs. Sullivan, 29 Minn., 206; 12 N. W., 698.

It is unnecessary that the grant should be capable of being brought within any of the definitions given to estates by the common law. The one here under consideration seems to have been intended as a present conditional bounty to the corporation to aid the building of a railroad, and to become absolute and attach to specific lands when the terms of the act should be complied with. To devote the lands to this specific purpose, and work a transfer of the title to *specific descriptions,* either (1) a further conveyance by the state; or (2) location under certificates issued by the Trustees was necessary, and especially provided for. It assumed that the transfer of title was absolutely involved in the act itself, and what should be done under it.

Rutherford vs. Green's heirs, 2 Wheat, 106.
McGee vs. Mathis, 4 Wall., 145.
Carroll vs. Safford, 3 How., 441.
Witherspoon vs. Duncan, 4 Wall., 462.
Starks vs. Starrs, 6 Wall., 462.
Railroad Co. vs. Prescott, 16 Wall., 603.
Defenback vs. Hawk, 115 U. S., 397.
Railroad Co. vs. Price, County, 133 U. S., 496.
Lessieurs vs. Price, 12 How., 59.
Fremont vs. U. S., 17 How., 542.
Ledoux vs. Black, 18 How., 473.
Henshaw vs. Bissell, 18 Wall., 255.
Schulenberg vs. Harriman, 21 Wall., 44.
Miller vs. Dale, 92 U. S., 593.
St. Paul etc. R. R. Co. vs. Winona etc. R. R. Co., 112, U. S., 872.
Minneapolis & St. C. R. R. Co. vs. Duluth & W. R. Co., (Duluth R. R. Co., intervenors,) 47 N. W., 464.

In Rutherford vs. Green's heirs, 2 Wheat, 196, decided in 1877, the State of North Carolina, in 1780, passed an act reserving a certain tract of country to be appropriated to its officers and soldiers; and in 1782, after granting 640 acres in the territory reserved, to each family that had previously settled on it, and appointing commissioners to lay off, in one or more tracts, the land allotted to the officers and soldiers, proceeded to enact that 25,000 acres of lands should be allotted for and given to Major-General Nathaniel Greene, his heirs and assigns, *within the bounds of the lands reserved for the use of the army,* to be laid off by the aforesaid commissioners, as a mark of the high sense the state entertained of the extraordinary services of that brave and gallant officer.

In pursuance of this law, the commissioners allotted 25,000 acres of land to General Greene, and caused the tract to be surveyed and returned to the proper officer. The manner in which the title originated under which Rutherford claimed is not very clearly stated in this case. The decision turned altogether on the validity of the title of General Greene, and the date at which it commenced.

It was contended against the title conveyed by this grant that the words gave nothing; that they were in the future, not in the present tense, and indicated an intention to give in the future, but created no obligation on the state, nor present interest in General Greene.

Chief Justice Marshall, in speaking for the court as to this contention says:

> "The court thinks differently. The words are words of absolute donation, not indeed of any specific land, but of 25,000 acres in the territory set apart

> for a certain quantity of land by the government, to be afterwards surveyed and laid off within a certain territory, vests in the grantee a present and immediate interest. In the language of the court, the general gift becomes a particular gift when the survey is made."

In Schulenberg vs. Harriman, 21 Wall., 44, decided in 1875, the question arose as to whether the act of Congress, approved June 3, 1856, granting public lands to the State of Wisconsin, to aid in the construction of a railroad in that state, passed a present title. In answer to this question, Mr. Justice Field, speaking for the court, says:

> "That the Act of Congress of June 3, 1856, passed a present interest in the lands designated, there can be no doubt. The language used imports a present grant, and admits of no other meaning. * * * * * It is true that the route of the railroad for the construction of which the grant was made, was to be designated, and until such designation the title did not attach to any specific tract of land. The title passed to the sections to be afterwards located. When the route was fixed, their location became certain, and the title which was previously imperfect acquired precision, and became attached to the lands."

The court then comments upon and cites with approval the case of Rutherford vs. Greene's Heirs, 2 Wheat, 196, and Lessieur vs. Price, 12 How., 59.

In speaking of the last case, the court says:

> "In Lessieur vs. Price, the operation of this act (of March 6, 1820) was considered, and the court said: 'The land was granted by the act of 1820; it was a present grant, wanting identity to make it perfect, and the legislature was vested with full power

to select and locate the lands; and we need only here say what was substantially said by this court in the case of Rutherford vs. Greene's heirs; that the act of 1820 vested a title in the state legislature pursuant to the Act of Congress, and the notice given of such location to the surveyor-general and the register of the local land district where the lands lay, gave precision to the title, and attached to it the lands selected. The United States assented to this mode of proceeding, nor can any individual call it in question."

Continuing the court says:

"Numerous other decisions may be cited to the same purport. They establish the conclusion that unless there are other clauses in the statute restraining the operation of words of the present grant, these can be taken in their natural sense to import an immediate transfer of title; although subsequent proceedings, may be required to give precision to the title, and attach it to specific tracts. No individual can call in question the validity of the proceedings by which precision is thus given to the title, where the United States was satisfied with them."

The title of the plaintiff to the lands in question is very similar to the title of a location fully and legally complied with under a New Madrid certificate, in which it has been held that if, at the time of the selection, sale and confirmation were made, and patents issued to other parties, lands were appropriated by the location, surveys and returns thereof, with New Madrid certificates, the latter would prevail against the former.

Stoddard vs. Chambers, 2 How., 284.
Barry vs. Gamble, 3 How., 32.
Lessieur vs. Price, 12 How., 59.

Hall vs. Gaines, 22 How., 144.
Witherspoon vs. Duncan, 4 Wall., 218.
Rector vs. Ashley, 6 Wall., 142.
Hot Springs cases, 92 U. S., 698 text, 713. (23:690-6.)

The plaintiff's title to the lands may in many respects be compared with the right of a pre-emptor who has fully complied with all the provisions of the Act of Congress, but has not yet received a patent for his lands. The strict legal title is in the government, but the entire equitable title and interest are in the pre-emptor, who may transfer or assign it at his pleasure. He may convey the deed, and the legal title will vest in the grantee upon the issuing of the patent. At this stage of the proceeding, the right of a patent for the lands has become vested in the pre-emptor, and the government holds the legal title in trust for him until the patent issues.

U. S. vs. Freyberg, 32 Fed. Rep., 195.
Defenback vs. Hawk, 115 U. S., 392.
Simmons vs. Wagner, 101 U. S., 260.
Pacific Coast Mining Co. vs. Spargoe, 16 Fed. Rep., 348.
Starke vs. Starr, 6 Wall., 402.

But between the United States and the owner of a certificate of purchase, the certificate is as valid and binding as a patent.

3 McLean (U. S.) 107.
Carroll vs. Safford, 3 How., 441.
Hutchins vs. Lowe, 15 Wall, 77.
Defenback vs. Hawk, 115 U. S., 392.
Coleman vs. Allen, 5 Mo. App., 127.
Hyde vs. Holland, 8 Oregon, 331.
Goodlet vs. Smithson, 5 Port. (Ala.), 345.

It has been frequently held that when the donee or purchaser of public lands has complied with the conditions upon the performance of which he is entitled to a patent or a deed, the government ceases to have any interest in such lands, and until the patent is granted or deed is executed, holds the naked legal title in trust for the purchaser or his assigns.

Carroll vs. Safford, 44 U. S., 3 How., 441-460 (11 671).
Witherspoon vs. Duncan, 71 U. S., 4 Wall., 210. (18:339).
Kas. Pac. R. R. Co. vs. Prescott, 83 U. S., 16 Wall., 603, (211:373).
Union Pac. R. R. Co. vs. Price County, 133 U. S., 496 (33:687).
Defenback vs. Hawk., 115 U. S., 392.
Hagan vs. Ellis, 39 Fla., 475.

In *Carroll vs. Safford,* supra, the complainant entered certain lands belonging to the United States, in the local land office, paid for them the required price, and received from the office a land certificate. Patents were issued for them, but before their issue the lands were assessed for taxation and sold for taxes. The question whether they were subject to taxation by the state after their entry, before the patents were issued, was answered in the affirmative. Said the Court:

> "When the land was purchased and paid for it was no longer the property of the United States, but of the purchaser. He held it for a final certificate, which could no more be canceled by the United States than a patent. * * * * * * It is said that the fee is not in the purchaser, but in the United States, until the patent shall issue. This is so, technically, at law, but not in equity. The land in the hands of the purchaser is real estate, descends

to his heirs, and does not go to his executors or administrators. * * * * * * Lands which have been sold by the United States can in no sense be called the property of the United States. They are no more the property of the United States than land patented. So far as the rights of the purchaser are concerned, they are protected under the patent centificate as fully as under the patent.

"Suppose the officers of the government had sold a tract of land, received the purchase money, and issued a patent certificate; can it be contended that they could sell it again and convey a good title? They could no more do this than they could sell lands a second time which had been previously patented. When sold, the government, until the patent shall issue, holds the mere legal title to the lands in trust for the purchaser, and any second purchaser would take the lands subject to the trust."

In *Witherspoon vs. Duncan*, 4 Wall. 210, it is held that lands originally public cease to be public after they have been entered at the land office, and a certificate of entry has been obtained, and are liable to taxation.

The right to tax attaches as well to donation entries as to other entries; the particular lands in either case, when the entry is made and certificate given, being segregated from the amount of public lands and becoming private property.

Mr. Justice Davis, in speaking for the court in this case, says:

"In no just sense can lands be said to be public after they have been entered at the land office, and a certificate of entry obtained. If public lands before the entry, after it they are private property. If subject to sale, the government has no power to revoke the entry and withhold the patent. A second sale, if the first was authorized by law, confers no right on

the buyer, and is a void act." (Citing Carroll vs. Safford, 3 How., 441.)

In speaking of the similarity between a cash and a donation entry, the learned judge continues:

> "But it is insisted that there is a difference between a cash and a donation entry; that the one may be complete when the money is paid but the other is not perfected until it is confirmed by the general land office and patent issued. * * In either case, when the entry is made and certificate given, the particular land is segregated from the amount of public land, and becomes private property. In the one case the entry is complete when the money is paid; in the other when the required proofs are made. In neither can the patent be withheld if the original entry was lawful."

In Defenback vs. Hawk, 115 U. S., 392, it was held that a certificate of purchase of mineral lands upon an entry of the same by a claimant at the local office, passes the right of the government to him, and, as against the acquisition of title by any other party, is equivalent to a patent. The land thereby ceases to be the subject of sale by the government, which thereafter holds the legal title in trust for the holder of the certificate.

Mr. Justice Field, in speaking for the court in this case, says:

> "The plaintiff alleges, and the answer admits that on the 20th day of November, 1877, the plaintiff applied to the United States Land Office at Deadwood, to enter the lands as a placer mining claim, and that on the 31st day of January, 1878, he did enter it as such by paying the government price therefor. * * * * The right of the government, therefor passed to him, and though its deed, that is,

its patent, was not issued to him until January 31, 1882, the certificate of purchase, which was given to him upon the entry, was, so far as the acquisition of title by any other party was concerned, equivalent to a patent. It was not until the 28th of July following that the probate judge entered the townsite. The land had then ceased to be subject to a patent. It was no longer its property; it held the legal title only in trust for the holder of the certificate."

In Wisconsin Central Railroad Co. vs. Price County, 133 U. S., 496, where a similar case arose, Mr. Justice Field, in speaking for the court says:

"Usually the possession of the legal title by the government determines both the fact and the right of ownership. There is, however, an exception to this doctrine, with respect to the public domain, which is as well settled as the doctrine itself; and that is, that where congress has prescribed the conditions upon which portions of that domain may be alienated, and provided that upon the performance of the condition a patent of the United States shall issue to the donee or purchaser, and all such conditions are complied with, the lands alienated being distinctly defined, it only remains for the government to issue its patent, and, until such issue, holds the legal title in trust for him. * * * * * * When the government has ceased to hold any such right or interest in the property as to justify it in withholding the patent from the donee or purchaser—then the donee or purchaser will be treated as the beneficial owner of the lands, and the same be held subject to taxation as his property. This exception to the general doctrine is founded upon the principle that he who has the right to property—shall not be permitted to use the legal title of the government to avoid his just share of state taxation."

See also
Mundee vs. Freeman, 23 Fla., 529, text 536.
Hagan vs. Ellis, 39 Fla., 475.

It is a simple matter to apply the doctrine of the foregoing cases to the contention in controversy. The unbroken current of decisions, in our judgment, sets the principle announced in them at rest. These principles apply to and control the present controversy, and we therefore confidently affirm, in language slightly changed from what was said by the federal court in Lessieur vs. Price, that the lands were granted by the act of 1893; that it was a present grant, wanting identity to make it perfect; that the railway company earned the lands; that it or its assigns were vested with full power under the certificates issued to select and locate the same; that the selections so made by such assignee, pursuant to said act, gave precision to the title, and attached to the lands selected; that from the time when there was a selection duly made under said certificates, and in conformity with said act, the plaintiff herein must be deemed to be the owner of the lands.

II.

The Act of January 6th, 1855, known as the Internal Improvement Act, did not vest in the Trustees of the Internal Improvement Fund such an interest in the lands as to preclude the rights of plaintiff under the legislative grant of 1893.

Did the state, by the act of January 6th, 1855, (see appendix) commonly known as the Internal Improvement Act, lose its proprietary interest in, and control

over, the lands granted to the state by the Act of Congress of September 28th, 1850, and all right to any further disposition of same outside of the six-mile limits specified in the first above mentioned act.

It is contended that the title to these lands vested in the Trustees of the Internal Improvement Fund under the act of January 6th, 1855, until the trust with which they were burdened was entirely wound up; that prior to the winding up of the trust, the legislature could not grant the lands in controversy to the Atlantic, Suwannee River & Gulf Railway Company, or to any other corporation; that any grants so made would be subject to the Internal Improvement Act, and void.

Under the authorities, both state and federal, the state owned the residuary interest and beneficiary title to the lands; the trustees are merely administrative agents authorized to carry out the will of the state as expressed by its legislature; the Internal Improvement Act is not organic law, and not binding upon subsequent legislatures, save only to the extent of vested rights existing under the trust created by said act.

The Trustees of the Internal Improvement Fund are a mere political agency of the state, created for the state's convenience, and to aid in carrying out, within limited powers, the policy of the state. It can have no will contrary to the will of the state, and it is subject to the paramount authority of the state in respect as well to its acts, as the title to the lands held by it for public purposes. The state made it and could, in its discretion, unmake it, and administer such property and fund through other instrumentalities.

THIS HAS BEEN THOROUGHLY ESTABLISHED BY LEGISLATIVE INTERPRETATION.

In the consideration of a statute, the real inquiry is what was the intention of the legislature. This intention is to be gathered from the entire system of legislation upon the same subject matter, and is proper to consider other statutes in pari materia, whether they be repealed or unrepealed.

State vs. Gerhardt, 44 N. E., 469; 33 L. R. A., 313.
Church vs. Croker, 3 Mass., 17.
Thayer vs. Dudley, Idem, 269.
Holland vs. Makepeace, 3 Mass., 416.
Holbrook vs. Holbrook, 18 Mass., 248.
Inhabitants Hendon vs. Worcester Co., 27 Mass., 255.

In the construction of a statute, all laws in pari materia should be considered in order to ascertain the intention of the legislature.

Bryan's Heirs vs. Dennis, 4 Fla., 45.
Mitchell vs. Duncan, 7 Fla., 13.
O'Donovan ex parte, 24 Fla., 13.
Fla. Atl. & Gulf Central Ry. Co. vs. Pensacola & G. A. Ry. Co., 10 Fla., 145.
Forbes vs. Board Health, Escambia County, 28 Fla., 26.
State ex rel. Bd. Pub. Instruction vs. Bd. Co. Comms. Volusia Co., 28 Fla., 793.

"The meaning and intention of the legislature in the enactment and repeal of laws may often be found in the contemporaneous and subsequent action of that body, in reference to the subject matter, and

the evident intention of the legislature will control the construction of its acts."

Doggett vs. Water, 15 Fla., 355.

An examination of the numerous acts of the legislature throwing restrictions around the board of Trustees of the Internal Improvement Fund, prescribing its duties, directing it in the discharge of same, curtailing its powers wherever and whenever it was thought advisable, and the frequent grants of lands made to be satisfied from swamp and overflowed lands outside of the six-mile limit; specified in the act of January 6th, 1855, show very clearly the construction placed upon the Internal Improvement act by the legislature for the last past thirty or forty years.

It is apparent from these acts that the legislature regarded the Trustees of the Internal Improvement Fund as the mere administrative agents of the state, subject to the state's direction and control, and that the right to the disposition of swamp and overflowed lands granted to the state by act of Congress September 28, 1850, by legislative grant and beyond the six-mile limit specified in the act of January 6th, 1855, still resided in the state.

By the fourth section of Chapter 1771, Acts of 1870, the state, for the purpose of aiding the Santa Rosa Railroad, Banking and Insurance Co., incorporated under the act, granted all of the lands belonging to the state and to the Internal Improvement Fund, situate in Santa Rosa County, without reference to the six-mile limit prescribed in the act of January 6th, 1855.

Since that time it has been the constant practice of the legislature to make large grants to railroad companies, and to provide that in the event of a deficiency of a sufficient amount within the six-mile limit, that it shall be

satisfied from the swamp and overflowed lands acquired by the State under Act of Congress, September 28, 1850, outside of the six-mile limit.

By Section 2, of Chapter 3474, Acts of 1883, the legislature directed the appropriation of all the lands acquired by the State under the Act of Congress, September 28, 1850, in the counties of Duval, Baker, Brevard, Columbia, Suwannee, Madison, Jefferson and Leon, not theretofore granted, to be appropriated and set aside for the purpose of paying off and discharging certain indebtedness therein specified indicating that the State, according to its own construction, still held the title to and paramount control over these lands.

This control by the State is emphasized by Acts of 1860 down to the present time, too numerous to mention.

Legislative enactments showing the construction which the legislature has placed upon a statute is known as a practical construction in contradistinction to a judicial construction, and, as already stated, all statutes relating to the same thing or general subject matter are to be considered together, and are in pari materia, no matter when they were passed.

In Bruce vs. Schuyler, 46 Am. Dec. 447, the court, in speaking of the doctrine of practical construction and its legitimate scope, said:

> "It has always been regarded by the courts as equivalent to positive law."

In French vs. State, (Ind.) 29 L. R. A. 113, the court said:

> 'A practical construction of a State Statute for nearly forty years, will be conclusive of its meaning, when that would be otherwise doubtful."

In State vs. Gerhardt, (Ind.) 33 L. R. A. 313, the court said:

> "Continued and repeated practice of the legislature, unquestioned for more than forty years, will control the construction of a constitutional provision, applicable when the court is in doubt."

In Hovey vs. Reilly, 21 N. E. 890, the court, in speaking upon the same subject, and after citing authorities, said:

> "It is unnecessary to quote the expressions of the court for harmony reigns throughout the whole scope of judicial opinion upon this subject."

Board vs. Bunting, 12 N. E. 151.
Weaver vs. Templin, 14 N. E. 600.
Stewart vs. Laird, 1 Cranch, 299.
Martin vs. Hunter, 1 Wheat, 304.
Cohens vs. Virginia, 6 Wheat, 264.
Ogden vs. Saunders, 12 Wheat, 213.
Minor vs. Happersett, 21 Wall., 162.
State vs. Parkinson, 5 Nev. 15.
Pike vs. Megoun, 44 Mo. 491.
People vs. Board, 100 Ill. 495.
State vs. Gerhardt, (Ind.) 33 L. R. A. 313.

"All Statutes in pari materia are to be construed together. Earl of Ailesbury vs. Pattison, 1 Doughl. 28; King vs. Excise Comrs. 2 T. R. 387. The legislature is presumed to have had former statutes before it, and to have been acquainted with their judicial construction and passed new statutes on the same subject with reference thereto. Steeloy vs. Lineberger, 72 Pa. 241. When a number of statutes, whenever passed, relate to the same thing or general subject matter, they are to be construed together, and are in pari materia. United States vs. Freeman, 44 U. S., 3 How, 556, 564; 11 L. Ed. 724, 727. Fer-

guson vs. Monroe County Supers., 71 Miss. 524; Com. vs. Sylvester, 13 Allen, 247; Louisville vs. Com. 9 Dana 70; State, Parry vs. Clark, 54 Mo. 216; Roff vs. Johnson, 40 Ga. 555; Linton's Appeal, 104 Pa. 228; Perkins vs. Perkins, 62 Barb, 531; United Soc. vs. Eagle Bank, 7 Conn. 456; Black, Interpretation of Laws, Sec. 86: We quote from Black on Interpretation of Laws, P. 206: 'The phrase 'Statute in pari materia' is applicable to private statutes of general laws made at different times, and in reference to the same subject. Thus the English laws concerning paupers, and their bankruptcy acts, are construed together as if they were one statute, and as if forming a united system.—Such laws are in pari materia.' To illustrate further, all the statutes of the same state relating to the property rights and contracts of married women, removing their common law disabilities, authorizing them to manage their separate estates, to engage in business, etc., are to be read and construed as constituting one system. Though they have been passed at different times, successively advancing to a standard the opposite of that of the common law, they are all strictly in pari materia, and any doubt or ambiguity in one should be cleared up by reference to the terms, the purpose and policy of the rest. Again, an act authorizing married women to dispose of their property by will is in pari materia with the general statute relating to the execution and proof of wills. So, also, all the laws of the State, whenever passed, relating to the subject of the regulation of the liquor traffic, are in pari materia' The Act known as the 'Nicholson Law' is supplemental to, and in pari materia with, the license law of 1875, and the same are therefore to be construed together. It is also the rule that whenever the statute can be so construed and applied as to avoid conflict with the constitution, and give it the force of law, such construction will be adopted by the courts. Warren vs. Britton, 84 Ind. 14; Camp-

bell vs. Dwiggins, 83 Ind. 473; Hays vs. Tippy, 91 Ind. 102; State, Duensing vs. Roby, 142 Ind. 168; ante, 213; Newland vs. Marsh, 19 Ill. 376; Dow vs. Norris, 4 N. H. 16; 17 Am. Dec. 400; Grenada County supers, vs. Brown, 112 U. S. 261, and cases cited on page 269; 28 L. Ed. 704, 707; Marshall vs. Grimes, 41 Miss. 27, 31. It should not be assumed that the law making department of the government intended to usurp or assume power prohibited to it, but in all cases the contrary presumption prevails. Judge Cooley, in his work on constitutional limitations, 6th edition, P. 218, says: 'For, as a conflict between the statute and the constitution is not to be implied, it would seem to follow, where the meaning of the constitution is clear, that the court, if possible, must give the statute such construction as will enable it to have effect. This is only saying in another form of words, that the court must construe the statute in accordance with the legislative intent; since it is always to be presumed the legislature designed the statute to take effect, and not to be a nullity.' "

That the state still had the residuary interest in and remained the beneficial proprietor of these lands, with the paramount right to make grants of same subject, of course, to the trusts with which they were burdened, is not only established by a practical construction of the Act of January 6, 1855, as shown by the various grants made by the state to be satisfied beyond the six-mile limit, but it has been established by repeated judicial construction, as well by the Supreme Court of Florida, as by the Supreme Court of the United States.

In the case of Florida vs. Anderson, 1 Otto, 667, (23:290-1), the court, in construing the Act of Jan. 6, 1855, said:

"The first question which naturally presents it-

self is whether the State of Florida has such an interest in the subject matter of the suit, and in the controversy respecting the same, as to give it a standing in court. It is suggested that the Trustees of the Internal Improvement Fund are the only parties legally interested, and that they have no right to bring an original bill in this court. To this it may be answered, in the first place, that the State has a direct interest in the subject matter, the railroad in question, by reason of holding, as it does, the four million of bonds which are a statutory lien upon the road. In the next place, the interest of the State in the Internal Improvement Fund is sufficiently direct to give it a standing in court, whenever the interests of that fund are brought before a court for inquiry.

"From the statement already made in reference to the history and character of this fund, and the duties of the Trustees in regard to it, it is apparent that the Trustees are merely agents of the State, invested with the legal title of the lands for their more convenient administration; and that the State remains in every respect the beneficial proprietor; subject to the guaranties which have been made to the holders of railroad bonds secured thereby. The residuary interest in the fund belongs to the State. The fact that the Trustees consist of the governor and other executive officers, and that they are charged with the duties of drainage, reclamation, and settlement of the public lands (duties of a purely public character), shows that they are merely public agents, invested with an important branch of the State administration."

This construction was followed in Union Trust Co. of New York vs. Southern Inland Navigation Co., 130 U. S. 565; 32: 1143.

It was also directly and unequivocally adopted by the

Supreme Court of Florida in 1878, in the case of Trustees Internal Improvement Fund vs. P. P. M. R. R. Co. et al., 16 Fla., 708, where, after having, on page 720, referred to the Trustees as *agents for the State,* on page 721, the court says:

> "The question of the character and extent of the right of the Trustees of the Internal Improvement Fund, the right of the State as having a residuary interest in such fund, and the right and remedies of holders of bonds issued under the Internal Improvement fund Act of 1855, were considered by the Supreme Court of the United States in the case of the State of Florida vs. Anderson, et al., 91 U. S. 667. The views there expressed are entirely applicable to the pleadings and proceedings in this action. We will not here repeat them at length, but will state simply our entire acquiescence in the views there expressed."

What the court meant by this holding that the Trustees were "mere public agents, invested with an important branch of the State administration;" and what the status which it gave them with respect to the property, and the continued control which the State had of it through the legislature, subject, of course, to vested rights acquired by third parties, it made entirely clear by the decision of the same court at the same term in the case of:

State ex rel. Knowles, 16 Fla 577.

In that case, certain Trustees had been invested by the State with certain public lands of the State, derived from the United States Government, as in this case, for a public purpose. The State saw fit, by a later legislative act, to take the property from them and vest it in others. They resisted this, alleging that the title was in them, and could not be disturbed by later enactment. The court

held them to be mere public agents, and therefore vested with no interest which the State, the real owner, could not divest, and that this was not affected by the fact that they had entered into contracts with respect to the property. On pages 616 and 617, the court uses the following language:

> "The next general proposition as to this statute is that it impairs the obligation of a contract. The statute changes the Trustees of this college. It substitutes the Trustees named in the Act of 1877 for those named in the Act of 1872, as the Act of 1872 substituted those named in it for those named in the Act of 1870. The grounds upon which this view is based is that this is a private, not a public, corporation. The corporation is itself founded by the State through property derived from the Government of the United States. These Trustees are made by this legislature the agents of the State to collect and disburse property appropriated by the general goverment to the State for a public purpose.
>
> "There is not and never was any private property in the Trustees in the funds. They were derived from the government. The founder of this institution was the government of the State of Florida, and the property which constituted its basis was public moneys of the State of Florida derived by it from the government of the United States in trust for the establishment of an institution of this character.
>
> "It never was the purpose of the State of Florida to give these Trustees any private right to this property. Throughout the whole legislation they are shown to be simply public agents to manage a public property. The only right they have to it is by the legislation of the State, and every Section of these Acts shows that it was founded by public funds and for a public purpose.
>
> 5 Stew. & Port., 23; 4 Wheat, 518.

"It may be true that any legislation of the State appropriating these funds to any other purpose than that public purpose named in the Act of Congress, might have been in bad faith, but that is a matter which does not concern these Trustees, nor does this fact change the nature of the institution.

"It is insisted that the obligation of a contract with W. H. Gleason is impaired by the Act of 1877, in that it directs a removal of the college. This question is entirely independent of the question raised in this case, which is the right of the trustees to hold and exercise a public trust against the provisions of a statute naming other Trustees in their stead. Because they may have made a contract with some one else cannot extend their powers or rights.

"The question whether a city or town has made a contract with A. B. or C. is entirely distinct from the question whether the legislature may not change the affairs of a public municipal corporation.

"What has been said disposes of the further objection on the ground that these respondents are deprived of their property without due process of law.

"Holding their franchises subject to legislative action, legislation depriving them of them is due process of law."

This was in the year 1878. For more than twenty years thereafter, this interpretation of the law was accepted without question by every one, courts, legislatures, and administrations; and millions of acres were granted, earned and deeded to various railroads in aid of their construction, without a murmur or suggestion from any one that it was not proper and legitimate. The Florida court reiterated its previous holding in the case of

Hawkins vs. Trustees, 34 Fla., 405.

And it has been recently followed by Judge Swayne of the Northern District of Florida, in the case of Kittel vs. Trustee Internal Improvement Fund, the 3d headnote of which is as follows:

> "Under the Act of the legislature of Florida of January 6, 1855, known as the Internal Improvement Fund Act, creating Trustees, consisting of the Governor, Comptroller, Treasurer, Attorney General and Secretary of Agriculture (by subsequent amendment), to hold the same in trust for the uses and purposes provided for therein by said Act, it was competent for said trustees to recognize and make effective a railroad land grant, passed by said legislature in 1883, not strictly in conformity with the provisions of the Internal Improvement Fund Act, and a certificate, containing a promise to make deeds when the patents were received from the United States, will be enforced in a proceeding for specific performance."

See also:

Trustees I. I. Fund vs. Bailey, 10 Fla. 113.
Gleason vs. Trustees, 15 Fla. 398.
Trustees I. I. Fund vs. St. Johns Ry. Co., 16 Fla. 531.
Gonzalez vs. Sullivan, 16 Fla. 791.

WE INVOKE, THEN, IN THIS CASE, THE DOCTRINE OF *STATE DECISIS.*

With the rulings of the Supreme Court of this State and of the United States, which have been adopted as law, and acted upon as fixing property rights for thirty years, the necessity for applying the rule would be irresistible.

But here we have more. "The courts are extremely reluctant to overturn a decision construing a statute

when the construction has in any manner received the sanction of the legislature."

26 Am. & Eng. Encyc. of Law, 167.

The legislature has for years acted upon the construction announced by the courts.

No stronger case for the application of the rule exists.

A denial of plaintiff's rights now, after the building of this road and many others, upon the faith of these grants, not because the right of any creditor or bond holder required it, but because the State now desires to use the lands for new benefits to be acquired, would seem almost inconceivable in the depth of its bad faith.

If the State still has the residuary interest in and remains the beneficial proprietor of these lands, certainly it could convey such interest as it has, and neither the trustees or other defendants could question the conveyance.

The State grants, subject to the trust, of course, but this does not render the grant void. Conceding that these lands at the time were burdened with the pledge as security to the bond holders, the grant would be valid as to all except the bond holders themselves, and as to them the grant would not be void so long as the security intended remained unimpaired.

We think it clear that the legislature intended nothing more by the Act of Jan. 6th, 1855, than to pledge these lands as security to the bond holders, and to vest the mere dry, naked legal title in these agents for the more convenient and speedy accomplishment of its purpose.

The bond holders are the beneficiaries of the trust. The pledge was made for their protection, and if there has been an invasion of their rights under the pledge, they, and they alone, can question it.

The plaintiff's predecessor in title, having accepted the grant, and having fulfilled all the conditions under it, acquired, as against the State, a vested right to the specific lands here in question, and the State cannot now question it. How could the mere agents of the State be heard to do so? At most, the grant would be voidable only at the instance of the cestui que trust, in the event the grant should operate to impair the security intended.

If the grant is ever to be questioned, it must be done for the benefit, and at the instance of the beneficiaries of the trust, and by them only, and upon a showing that the undisposed of land acquired under the Act of Congress of September 28, 1850, are insufficient to afford the security intended. Clearly, the grant is not void, and cannot be questioned by the defendants. The grant is valid until such time as it may be determined that the lands are necessary to discharge and satisfy the guaranties made to the bond holders.

The plaintiff's predecessors in title were entitled to select the lands in controversy, and did so in conformity with the provisions of the grant. By this, the rights of the company under its selection became fixed and vested, notwithstanding the refusal of the trustees to execute deeds.

> "When the company, in accordance with all the requirements of the law, makes a selection of indemnity lands, and duly files its lists of selections, its right to the lands cannot be defeated or affected by the arbritrary and wrongful refusal of the officers of the land department to recognize and approve the selections."
>
> McHenry et al. vs. Nygaard, (Minn.) 74 N. W. 106.
>
> Railroad Co. vs. Wiggs, 43 Fed. 333.

St. Paul & S. C. R.Co. vs. Winona & St. P. R. Co., 112 U. S. 720.
Lytle vs. Ark. 9 How. 314; 13: 156.

The deed, had it been executed, would not have vested the grantee with any additional property in the land. It would simply have afforded him the legal evidence of the title to the lands which had been already acquired by the grant and the selection under it.

Cavender vs. Smith, 3 Green, Iowa, 56 Am. Dec. 541.
Goodlet vs. Smithson, (Ala.)31 Am. Dec. 561.
Carroll vs. Safford, 3 How. 441; 11: 680.
Bagnell vs. Brodrich, 28 U. S. 13 Pet. 10: 235.
Huthing vs. Lowe, 82 U. S. 15 Wall. 88; 21: 85.
Omaha & G. S. Ry. Co. vs. Tabor, 5 L. R. A. at page 242.
Carmen vs. Johnson, 29 Mo. 94.
Pioneer Land Co. vs. Maddox, (Cal.) 42 Pac. 297; 50 Am. St. Rep. 72.
Benson Min. & S. Co. vs. Alta Min. & S. Co., 145 U. S. 428.
Hamilton vs. Southern Nev. Gold & Sil. Min. Co., 33 Fed. 56.
Starke vs. Starr, 6 Wall 402; 18: 925.
McClung vs. Steen, 32 Fed. 373.
U. S. vs. Freyberg, 32 Fed. 195.
People vs. Sherro, 30 Cal. 648.
Carroll vs. Perry, 5th Fed. Cas. 167, No. 2456.
Vose vs. Supervisors, 12 Wis. 36.
Witherspoon vs. Duncan, 4 Wall. 218; 18: 232.
Wirth vs. Branson, 98 U. S. 118; 25: 86.
Simmons vs. Wagner, 101 U. S. 260; 25: 910.

After the selection was made, it became the duty of the trustees of the Internal Improvement Fund, who are the mere administrative agents of the State, to execute deeds.

Simpson vs. Dolph, 97 U. S. 652; 24: 1063.

Dibble vs. Bellington, 163 U. S. 65; 14: 72.
Cunningham vs. Ashley, 14 How. 314; 462.

It is conceded that "In addition to the lands herein described there are more than two million acres of swamp and overflowed lands belonging to the State of Florida, the title to which remains in the Trustees of the Internal Improvement Fund, and which passed to and vested in said State under and by virtue of the Act of Congress of September 28, 1850." (See Bill, paragraph 21, folio 22, p. 17.)

There is no showing or claim that the application of the 110,000 acres in suit upon the indebtedness due to the assignee of the Atlantic, Suwannee River & Gulf Railway Company, would prevent, retard, or even inconvenience the trustees in paying or providing for the payment of the creditors of the Internal Improvement Fund.

All prior acts, inconsistent with the Act of May 24, 1893, were repealed by implication by force of said act save only as to vested rights under such former acts. No former act of the legislature was irrepealable. To contend that the general assembly had power to pass irrepealable laws, is to admit that it may alter the very constitution from which it derives its authority, because in so far as one legislature could bind a subsequent one by its enactment, it could in the same degree reduce the legislative power of its successors, and the process might be repeated until one by one the subjects of legislation would be excluded altogether from subsequent control.

In the case of Gonzalez vs. Sullivan, 16 Fla. 798, the Supreme Court of Florida uses this language:

"The court here simply showed that the legislature had the right to designate some objects of improvement to be constructed first, and to postpone others.

While this may be true of this legislature, it is also true of the subsequent legislature, that its powers were not limited by the powers of the first, unless the act of the first one was of such character as called into operation a constitutional limitation, and something more than a merely antecedent exercise of legislative power stood in the way of the exercise of the powers of the subsequent one.

"The Internal Improvement Act is not an organic law, and the power of one legislature is no greater than another. Where the power of the subsequent one is limited, it results from the fact that the act of the first is of such character that organic law renders it unavailable through constitutional limitations covering the subject."

Furthermore, there was a contract between the Trustees and The Atlantic, Suwannee River & Gulf Railway Company, and therefore there was an obligation on the part of the Trustees to execute a deed to the lands earned and selected under the provisions of the act.

(a) The bill alleges such a contract, and the various steps taken by the Atlantic, Suwannee River & Gulf Railway Company, and its successors, and the Trustees, in performance and fulfillment of the same.

The demurrer admits the facts so alleged. Upon no other theory can the action of the trustees be explained during the various steps and proceedings taken in fulfillment of such contract, from the organization of the company to the acceptance of the road and issuance of certificates authorizing the selection and location of lands thereunder, to which the railway company, or its successors or assigns, was entitled, in accordance with the provisions of the act and by the terms of such certificates.

(b) The charter itself was a contract.
Fletcher vs. Peck, 6 Cranch. (U. S.) 87.
Terret vs. Taylor, 9 Cranch. (U. S.) 43.
Paylet vs. Clarke, 9 Cranch. (U. S.) 292.

(c) Every certificate was a contract.
McGee vs. Mathis, 4 Wall. 143.

In this case, Mr. Justice Chase, in speaking for the court, and explaining the legal effect of assignable certificates issued under the authority of the State Legislature to the owner to locate lands granted to such State under act of Congress of September 28, 1850, says:

> "It seems quite clear that the act (of Arkansas) of 1851, authorizing the issue of transferrable land scrip (land certificates) and its receipt from locaters of land in payment, and the provision of the fourteenth section, offering inducements to purchasers and contractors by exempting from taxation, for ten years, or until reclaimed all the swamp or overflowed lands, constituted a contract between the State and the holders of the land scrip issued under the act.
>
> "When the scrip was issued to a contractor, *it represented a certain quantity of land* untaxable for ten years unless the land should be sooner made fit for cultivation. When transferred to another person, *it represented to him a like quantity of land. The contract of the State was to convey the land for the scrip, and* to refrain from taxation for the time specified. *Every piece of scrip was a contract between the State and the original holder and his assigns.* Now what was the effect of that contract when made? *Did it not bind the State to receive the scrip in payment of swamp land,* exempted for a limited time from taxation? *The scrip, if not receivable for lands, was worthless.* To annul the quality of receivability, was to annul the contract. But the exemption of the lands for which it was receivable

from taxation, was a principal element in its value; and repeal of the execution was the destruction of this element of value. *This was certainly an impairment of the contract. The State could no more change the terms of the contract by* changing the stipulated character of the land to be conveyed in satisfaction of the scrip as to liability to taxation than it could *abrogate the contract altogether by refusing to receive the scrip at all in payment for land.*"

That such a contract may be enforced against a subsequent purchaser with notice, see many cases cited in 44 Cent Dig. Col. 1283, No. 53.

But no contract with the Trustees is necessary. The legislature prescribed the form and method of selection under such certificates before the floating rights could attach to specific descriptions. The plaintiff's predecessor in title fully complied with the law in this regard, and the selection so made gave precision to the title, and attached it to the lands selected.

The plaintiff is not driven to resort to the proceeds of the lands in the hands of the Trustees, but may maintain his right to the lands.

The defendant (Wade) had such notice of plaintiff's rights as to preclude him from claiming the benefit of an innocent purchaser, without notice. He is chargeable with notice of the following facts:

1. The public law granting swamp and overflowed lands to the plaintiff's predecessor in title, and specifying particularly how the title to such lands would be worked out under the act.

2. The record in the office of the Trustees of the Internal Improvement Fund, of the compliance with every provision and condition specified in the act.

3. The map and plat of actual selection of the lands in controversy.

4. The record of a conveyance from the plaintiff's predecessor in title to Arthur Meigs, which recited all the substantial facts under and by virtue of which title was so acquired, duly filed in the office of the county clerk in the county in which the lands lay, prior to the recording of the deed from the Trustees of the Internal Improvement Fund to said Wade. The recording of the contract of sale between the Atlantic Lumber Company, plaintiff's predecessor in title, and Arthur Meigs, was clearly entitled to registration, and imparted to the defendant Wade constructive notice of all the facts which he could have ascertained by actual examination of the records in the office of the Trustees of the Internal Improvement Fund, as well as those to which research would suggest an inquiry, and which would be disclosed by such inquiry.

24 Am. & Eng. Enc. of Law, 151.

But even without such record of mesne conveyances or contracts for conveyance, which recite the facts which constitute the chain of title, rights which rest upon public acts of public officials of record in their proper offices are not dependent for their preservation upon record in the records of conveyances in the county where the lands lie. These acts are themselves public records, and are not subject to the registry or recording laws.

In Evitts vs. Roth, 61 Tex., the court said:

> "While patents are admitted to record there is no law that requires them to be recorded in the county where the land is situated."

Patents and grants from the government are neither embraced in the language nor the spirit of Art. 4988, Pascal's Digest, which declares deeds and other instruments void as against creditors and subsequent purchasers without notice, unless they shall have been acknowledged, proved, and lodged with the clerk for record. In Rinehart vs. Skyler, 7 Ill., the court said the registry laws do not apply to patents or deeds emanating directly from the State or the United States. This was a deed made by the state auditor of lands acquired by the State under the revenue laws.

"Conveyance of land from the United States, whether directly, from the President, or indirectly, as through the governor and judges of Michigan, does not come within the purview of the recording laws, except where the terms employed specially include them, and there is nothing in the laws now or heretofore existing in this State that would render a deed from the governor and judges void in favor of a subsequent purchaser from the same source without notice as to whose deed was first upon record."

Moran vs. Palmer, 13 Mich., 367.

> "Patents of land from the United States do not come within the purview of the recording laws of the different states when the terms employed do not specifically include them. The original record in the general land office from which patents are issued has been held to give notice to the world of their existence."
>
> 20 Am. & Eng. Encyc. of Law, (1st Ed.) 530, cited in Lomax vs. Pickering, (Ill.) 46 N. E. 258.

In delivering the opinion, the court, in the last case, in speaking of the approval of the conveyance by the President required by statute, said:

"As respects the approval of the president required by the treaty, and the provision in the patent to render the deed effectual, we do not think the record laws have any bearing upon it. There was a record of the approval of the President in the Department at Washington, and that record was notice to all concerned from the time it was made, and we do not think the recording laws of the State required a copy of that record in the recorder's office where the land is located. A record of that character is similar to a patent issued by the President for lands that belong to the government which is not required to be recorded in the county where the land is located." Id.

5. In addition to this, is the actual possession (such only as could be taken of wild and uncultivated lands) by the actual posting of such lands covering a large portion of the same, and prohibited only from posting every acre by threats of personal violence by the agents of the defendant Wade.

Under these circumstances, the defendant took such notice as would be equivalent to recording under the Florida registry laws.

W. B. Cole, 49 Fed. Rep. 587.
C. C. C. A., 50 Fed. Rep., 182.
Lush vs. Reel, 36 Fla., 418.
Lake vs. Hemlock, 38 Fla., 53.
Massey vs. Hubbard, 18 Fla., 688.
Dresser vs. Missouri, 93 U. S., 92.
Moore vs. Simonson, 100 U. S., 445.
Woods vs. Garnett, 72 Miss. 78.
Syiles vs. Japher, 84 Tex., 91.

It is therefore respectfully submitted that, upon the merits of the case, the plaintiff is invested with the equitable title and beneficial ownership of the lands in question; that the defendant Wade holds the naked title

in trust for him, and should be compelled to convey the same.

DEFENDANTS' POSITION ANSWERED.

But it is contended that the plaintiff and appellant is bound by the findings of the State Court as to the fact of the enactment of the State statute; that the present controversy is *res adjudicata,* because already determined as to the same parties or their privies.

To the position of the defendants, we reply in substance:

1. That the defendants are in no position to raise the question.

2. That even if the defendants could raise the question under the pleadings, the plaintiff and appellant is, nevertheless, entitled to the relief sought.

As to the first:

We do not believe the questions raised by defendants can be properly disposed of on demurrer.

The following is the text of Sec. 12, Article 3, of the Constitution of Florida:

> "Each house shall keep a journal of its own proceedings, which shall be published, and the yeas and nays of the members of either house on any question shall, at the desire of any five members present, be entered on the journal."

Sec. 17, Art. 3, reads as follows:

> "Every bill shall be read by sections on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be pending shall deem it expedient to dispense with

this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journal of each house: PROVIDED, That any general revision of the entire laws embodied in any bill shall not be required to be read by sections upon its final passage, and its reading may be wholly dispensed with by a two-thirds vote; and a majority of the members present in each house shall be necessary to pass every bill or joint resolution; and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the secretary of the senate and the clerk of the house of representatives."

Sec. 28, Art. 3, reads as follows:

"Every bill that may have passed the legislature shall, before becoming a law, be presented to the governor; if he approves it he shall sign it, but if not he shall return it with his objections to the house in which it originated, which house shall cause such objections to be entered upon its journal, and proceed to reconsider it; if, after such reconsideration, it shall pass both houses by a two-thirds vote of members present, which vote shall be entered on the journal of each house, it shall become a law. If any bill shall not be returned within five days after it shall have been presented to the governor (Sunday excepted) the same shall be a law, in like manner as if he had signed it. If the legislature, by its final adjournment prevent such action, such bill shall be a law, unless the governor, within ten days after the adjournment, shall file such bill, with his objections thereto, in the office of the secretary of state, who shall lay the same before the legislature at its next session, and if the same shall receive two-thirds of the vote present it shall become a law."

In pursuance of that Article, the legislature enacted the following statutes as applicable to the legislative journals, viz:

It has made the duty of the attorney-general, among other things, to prepare "an index to each of the journals of the two branches of the legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the attorney-general shall be published under his direction."

Sec. 87, Rev. Stat. Fla.

Sec. 485 provides among other things as follows: "The contractor (public printer) shall be furnished by the attorney-general with an index of each of the journals of the two branches of the legislature, which, with the said journals, shall be printed and bound without any delay."

Sec. 488 provides that "the contractor (public printer) shall complete and deliver to the Secretary of State two hundred and fifty copies each of the journal of the proceedings of the senate and house, and the secretary of state shall, without delay, deliver one copy of each to the governor, lieutenant governor, each cabinet officer, each justice of the supreme court, forward one copy of each to the secretary of state of each state and territory of the United States, four copies of each to the secretary of state of the United States, one copy of each to each member of the senate and house, and retain in his office the remaining copies for gratuitous distribution to any one who may desire a copy and will deposit or forward a sufficient amount to prepay postage thereon."

The following joint rules have also been adopted:

Rule 2: After a bill shall have passed both houses, it shall be duly enrolled on parchment by the Clerk of the House of Representatives or Secretary of the Senate, as the bill may have originated in one or the other house before it shall be presented to the Governor of the State.

Rule 2: When bills are thus enrolled, they shall be examined by a joint committee of two from the Senate and two from the House of Representatives appointed as a standing committee for that purpose, who shall carefully compare the enrollment with the engrossed bill as passed in the two houses, and correcting any errors that may be discovered in the enrolled bills, make their reports forthwith to their respective houses.

While a general demurrer is a denial in form and substance of the right of complainant to have his case considered in a Court of Equity, it is an admission that the allegations of the bill, which are properly pleaded, are true.

In order to entitle the defendants to raise the question here raised, a plea alleging matter, which, if appearing on the face of the bill, would have been a good cause of demurrer, should have been resorted to, or the bill should have been answered.

In the case of Griffing vs. Gibb, 67 U. S., 519, the court refused to inquire into and take judicial notice of the acts of California relating to the harbor of San Francisco, and particularly of the Water Lot Act, referred to.

Even if plaintiff's rights are to be determined entirely by the validity, or invalidity of the Act of May

24, 1893, and the journals of the legislature are to control or furnish the evidence of its title and the regularity of its enactment, or otherwise, it is clear that proof must be taken as to what constitutes the journals and the entries required to be made therein by the constitution of the state; and we submit that any errors, or mistakes, may be shown in order to conform the journals to the exact facts.

State vs. Mason, 9 So. 776 at 787 and 804.
Koehler vs. Hill, 14 NW. 738 at 742.

The presumption will be indulged that the Act of 1893 was properly enacted, and to overcome this presumption the contrary must be shown by clear and indisputable proof.

We believe, under the facts stated in the bill and admitted by the demurrers, that the rule should be declared the law and control this case, announced by this court in the case of Field vs. Clark, 143 U. S., 649-700. We respectfully refer to this case as a part of our argument and to the able argument presented by the then Solicitor General, now President of the United States.

In those jurisdictions where resort may be had to the legislative journals and where enrolled bills signed by the presiding officers and governor are not conclusive when it appears from the journals that some constitutional requirement was not observed, which was not required to be entered on the journal, it will be presumed that what was commanded to be done was in fact done.

26 A. & E. Enc. of Law, 541.
State vs. Hocker (Fla.), 18 So., 767.
Field vs. Clark, 143 U. S., 649.
Potter vs. Lainhart, et al., 33 So., 251 at 257.
Cooley, Const. Lim., p. 168.

The 25th section of the bill of complaint, folios 25 to 31, pages 19-24, contains averments of facts which if true, establish that the act of the legislature entitled "An Act to incorporate the Atlantic, Suwannee River & Gulf Railway Company, to grant to said corporation certain privileges, and to aid the construction thereof," was passed in accordance with the constitution of Florida.

In other words upon the facts stated in the bill of complaint, the act so entitled was and is an existing statute.

Giving to the demurrers their ordinary legal effect, they admit these facts to be true. Unquestionably the bill in its sections, from 1st to 25th inclusive, states a good cause of action, and one of the very highest merit in point of morality, natural justice and equity.

We say this for the reason that the power of the legislature to pass the act of 1893, and the authority of the trustees to make the contracts with the railroad company they did make in pursuance of said act as set forth in the bill, is too clear to admit of any dispute. This being so, a clear and perfect case for relief is stated in the bill, and ordinarily the decree of the Circuit Court would be reversed as a matter of course for further proceedings.

RES JUDICATA.

But it is claimed that the judgment of the state court in Wade vs. The Atlantic Lumber Company, under which the present plaintiff claims title, reported in 51 Fla. 628, is res judicata and bars this suit, and that such bar can be raised by the demurrers to the bill. Or, otherwise stated, it is claimed this court is bound to give effect to that judgment when called to its attention in the published report of that cause, *without plea or answer or in-*

troduction of evidence in the court below. In short, that on a demurrer to the bill the transcript of the record of that cause can be consulted in the present case both in the court below and in this court, and that this court must give effect to it to the same extent and as fully as if pleaded or put in evidence on trial on issues of fact joined.

Whereas the rule is that an appellate Federal Court can not look at or consider any matter extrinsic the record.

No doubt the general rule is that the question of res adjudicata must be raised by plea or some sort of pleadings by defendant to let in the transcript of the record showing the adjudication set up as a bar or estoppel, or it must be introduced in evidence on the general issue or some issue of fact made by the pleadings.

1st Freeman on Judgments, sections 283-284. And the general rule is that if the character or form of the plaintiff's pleadings is such that defendant has an opportunity to plead the former judgment he must do so. And if he has no such opportunity, then he may introduce the record of the former judgment in evidence at common law under the general issue. Id. 284.

If defendant does neither, he waives the bar of the former judgment. (Id.) There is no rule of law that precludes a party who has obtained a judgment in his favor from waiving all rights under it in subsequent litigation. And it is very certain if the former judgment is neither pleaded nor put in evidence the court or jury must find according to the very truth of the issue, uninfluenced by the proceedings in the former suit.

CLAIMING ESTOPPEL CONTRARY TO FACTS ADMITTED BY DEMURRER.

But by the contention at bar, the defendants are claiming the proceedings in a former suit as a bar or estoppel contrary to the facts of the bill admitted by demurrers.

We think they cannot do this. If defendants in the court below had answered the bill admitting every material fact therein stated, they certainly would have admitted that the act of 1893 was constitutionally passed; and they could not have been heard to say, after such admissions, that the court in the Wade case had decided that it was not constitutionally passed.

They would have waived the right or been estopped by such admissions to claim any benefit from the judgment in the Wade case. But for all purposes of testing the merits of the bill in the present case, the demurrers as conclusively admit the facts therein stated as if they had been admitted by answer.

THE ALLEGATIONS.

The bill alleges that the perfect title of the bill was as is set out in the present complaint, when introduced, and retained that title through all the stages of legislative proceedings to the signing by the Governor and that the imperfect short title *was indorsed on the back of the bill by inadvertence or mistake.* The complaint further alleges that there was but one bill relating to the said railway introduced, pending or passed during the session of the legislature of 1893; and that such bill so correctly entitled was read at length and amended in substance before its final passage. And prior to the signing

of the act the presiding officers of each body caused the said bill to be read by the true title, and propounded the question "shall the title of the bill stand as read." See Par. 25th of the bill of complaint, folio 26, p. 21.

WELL PLEADED.

It can hardly be denied that the foregoing facts and all the facts contained in paragraph 25 are well pleaded; because the evidence to prove the same will not contradict or vary any fact which the constitution of Florida requires to be entered upon the journal of each House.

The constitution does not require any legislative proceeding to be entered on the journal except the yeas and nays on the final passage of every bill or joint resolution. See Art. 3d, Sections 17 and 28.

Potter vs. Lainhart, 42nd Fla., 647, 663-4.

Therefore the allegations showing that the act with the perfect title was constitutionally passed is susceptible of proof without disputing the truth of any fact required to beentered on the journals, and are well pleaded.

This being so, the defendants are in this situation: they admit by the demurrers *facts showing a good cause of action,* and in the same breath say that the Florida Court had decided they are not true—*an utterly inconsistent position.*

To go outside of the record of the case before the court, to see if it can find something to establish that the facts alleged and admitted to be true in this record, are not true, would certainly be an anomalous proceeding.

Story on Equity Pleadings says this cannot be done. The demurrers so far admit the facts alleged that if a

copy of a document is made part of the bill on argument of the demurrer to the bill, the original document cannot be referred to for the purpose of contradicting the averments in the bill.

Story, Section 452, note 3 p. 414 (10th Ed.), citing Cuddon vs. Tite, 1st Gif.,395. where it is said:

"The defendant cannot assume the existence of possible facts not stated but must plead such facts, and the demurrer cannot be allowed so long as the bill makes a case for either branch of the relief sought."

Citing Barber vs. Barber, 4th Drew, 666.

In Re Duncan, 139 U. S., 449, text 457, the court said:

"A statute duly certified is presumed to have been duly passed until the contrary appears. When on trial of a cause an *objection* is taken that the legislature failed to comply with the provisions of the Constitution in the enactment of a statute, it should be so presented that the adverse party may have an opportunity to controvert the allegations and to prove by the record conformity with constitutonal requirements."

People vs. Supervisors of Chenango, 8 N. Y., 317-324, and cases cited.

South Ottawa vs. Perkins, 94 U. S., 26[illegible], same evidence.

Now if the Wade case had never existed and the court below had decided on demurrer to this bill that the act was not constitutionally passed, this court would not hesitate to reverse the decree on the ground that the validity of the act was not in issue by the pleadings, and plaintiff has had no opportunity to prove the facts alleged which if true would justify the conclusion that the act was a valid act.

The question then is, Does the fact of the Florida decision in the Wade case make it the duty of this court to do otherwise than it would have done if such case did not exist? We think not. If the defendants did not choose to set up the former judgment in the Wade case by plea or otherwise, if they were willing to waive the benefit of that judgment, reopen the question of the validity of the act or its legal existence in the present action, they had and have a perfect right to do so; for it is perfectly clear that a party so situated is not precluded by any rule of law from waiving every right secured by a former judgment and relitigating the same questions in a second suit on the merits.

Indeed, if defendants did not choose to claim any benefit by plea of the former judgment they express a willingness not to take any benefit from it, and to have the existence of the statute relitigated in this action upon the facts stated in the present bill, we do not see that this court has any right or duty to prevent them from so doing.

If defendants by virtue of the judgment in the Wade case could plead res adjudicata in respect to the act having been constitutionally passed, but for reasons of their own prefer not to rely upon that judgment but desire or are willing to reopen the question on the real merits, certainly it cannot be the duty of this court to prevent them from so doing if it could. *"Expedit rei publicae ut sit finis litium" only applies where* the record of the former judgment has been put in evidence in the second action.

1st Freeman on Judgments, 4th Ed., Sec. 284, pp. 517-518.

In Bryan vs. Campbell, 177 U. S., 654, the court said:

> "The State court was at liberty to proceed to dispose of the case *upon the issues made by the parties,* and as neither party saw fit to set up the former decree (in Federal Court) as a bar to the action, *the State court was not bound to notice it.* It did not affect in *any way the jurisdiction of that court.*"

Indeed defendants in the present suit may lose absolutely all their rights, if any, gained in the former suit if they fail to set them up by plea in this suit.

> 1st Freeman on Judgments, Sec. 332.
> Union and Planters Bank vs. City of Memphis, 49 C. C. A., 455-464.

In that case on page 464, the court said:

> "The effect of the judgment in Union & Planters Bank vs. City of Memphis as res adjudicata in avoiding the efficacy of the prior judgment now relied upon as res adjudicata is not now before us, inasmuch as that judgment has not been pleaded or proven, the present hearing being upon a demurrer to the bill of complaint which does not set out the judgment in the case referred to."

In U. S. vs. Bliss, 172 U. S., 321, text 326, the court said:

> "If a party neither pleads nor proves what has been decided by a court of competent jurisdiction in some other case between himself and his antagonist, he cannot insist upon the benefit of res adjudicata, and this though such prior judgment may have been rendered by the same court."

We see no reason why the rule thus announced should not be applied here.

The fact that the former decision adjudged a statute was unconstitutionally passed does not necessarily take the case out of the rule that it must be pleaded or proved, for the defendants by not pleading it can waive any rights acquired thereunder, the same as if it was any other question of law decided in their favor that might have been pleaded in bar.

Nor do we think this court is bound upon the present condition of the pleadings to examine the legislative journals, in view of the fact that the constitution of Florida does not require anything to be spread on the journals except the yea and nay vote. The present complaint in paragraph 25 admits that the imperfect short title was indorsed upon the back of the act, but alleges this was done by mistake or inadvertence of some clerk, and it also alleges that the act itself had the proper title required by the constitution when the bill to be entitled an act, etc., was introduced into the legislature and that it retained that title through all steps of legislation up to the signature of the presiding officers of the two Houses, and by the Governor.

And as proof of these averments do not require the denial or change of anything required to be spread on the journals, nor any fact actually spread on the journal whether required or not, plaintiff should be given an opportunity to prove those allegations to sustain the validity of the law in the absence of any plea or proof of the former adjudication.

MISTAKE.

And it is competent also for plaintiff to prove that the short abbreviated title to the bill was the result of a mistake or omission. This was decided in Walnut vs.

Wade, where held that the word "Illinois," a vital word to identify the bill, was omitted by mistake, and this without any direct evidence to that effect.

Walnut vs. Wade, 103 U. S., 683-692.

"There is no rule of parliamentary law" and there is no provision of the constitution of Florida, "which requires a bill to preserve the same title through all its stages in both houses."

Walnut vs. Wade, 103 U. S., 692.

And upon the averments of the present bill, there was no change in the title of the bill from its introduction to its being signed and enrolled as a law of the state; and the abbreviated title was a clerical mistake, and this can be proved even though the journal has in it the short imperfect title.

To restate the case in another form:

1. Is the matter res judicata because already determined between the same parties or their privies?

2. Is this court bound by the finding of the State Court as to the fact of the enactment of a state statute, or is it so bound only in determining the probative effect of the same evidence?

3. If the latter, can the facts alleged in plaintiff's bill as to the title under which the act in question was introduced and passed, be determined by other evidence than the journals of the legislature or are these journals conclusive?

(1)

This case is not res judicata because of the former ruling of the State Court. The rule both in the Florida

courts and United States Courts is that a judgment or decree upon demurrer is an adjudication only of the rights of the parties upon the allegations of the pleading demurred to, and will not preclude the assertion of the right under other material allegations not appearing in the former suit.

Gilman vs. Rives, 10 Peters, 301.
Gould vs. E. & C. R. R. Co., 1 Otto (91 U. S.), 526.
Wiggins Ferry Co. vs. Ohio etc., R. R. Co., 142 U. S., 410.
And many cases in Rose's notes cited following these.
Fla. So. Ry. Co. vs. Brown, 23 Fla., 104.

In the former bill there was no allegation as to the facts in regard to the title of the act as actually introduced, as distinguished from the inference drawn from the recitals of the journals of the Senate and House. Upon those allegations the court held that no valid act was shown, there being nothing in the record to contradict the facts found by them from the journals.

We now file a bill containing these additional allegations to overcome the effect of these journal recitals. This case, therefore, has not been passed upon in the former decree unless the court finds that these allegations are immaterial and do not change the case for the reason that it is conclusively bound by the journals.

(2)

This court is not bound by the finding of the Supreme Court in the Atlantic Lumber Company case, that the act was not in fact validly passed.

Morris vs. Mason, 9 So., 776.

There is a distinction between the rule binding a Federal Court to follow the state court in its *construction* of a state statute and the rule requiring them to follow the state court in determining the *existence* of the statute. One is a question of law in which the Federal Court properly says that it will let the state authorities determine for themselves the meaning of their legislation, and not construe it in one way while the state construes it in another. The other is a question of fact to be determined upon the evidence. One litigant in his case may show that a right existed under a statute the enactment of which he duly proves; another litigant through carelessness or incompetence may fail to prove his case. Under these circumstances there is no reason in holding that the first named party with a valid right duly established shall be denied relief because the second party had previously failed of relief because of his negligence.

It is desirable, however, that there shall not be a hopeless conflict as to the existence of a statute, when the facts are ascertained, one judge being permitted to construe the evidence as showing one thing and another the other; and it is, therefore, properly held by the United States Supreme Court that the Federal Court will follow the State Court in its finding from the same evidence upon this subject. The reason of this and its limitation, however, is very clearly stated in South Ottawa vs. Perkins, 94 U. S., 260, in which the court says:

> "It would be a very unseemly state of things after the courts of Illinois had determined that a pretended statute of that state is not such, never having been constitutionally passed, for the courts of the United States *with the same evidence before them to hold otherwise.*"
>
> (Italics ours.)

And this same language is quoted at length in Wilkes County Commissioners vs. Coler, 180 U. S., 506, Text 520, as the basis of the ruling in the latter case. This limitation, therefore, runs through the decisions from beginning to end.

If, therefore, we are permitted to allege and prove the actual facts regarding the title of the bill in question as introduced and passed as they are stated in the bill, the state court will not have passed upon the question or the facts which will be presented to this court, and its ruling, therefore, will not be binding.

(3)

We have the right to do this, unless the journal entries are conclusive.

The journals cannot be held conclusive evidence of the title of the bill as introduced, without depriving us of the opportunity of showing the real facts. Denying this right is an infringement of the constitutional guarantee against deprivation of property without due process of law. A familiar illustration of this is the rule often announced that tax deeds may validly be made prima facie evidence of the regularity of the tax sale under which they were made, but cannot be made conclusive evidence of the fact.

Cooley on Taxation, 356, speaking of the right of the legislature to pass statutes giving this degree of authenticity to the tax deeds says: "It cannot deprive one of his property by making his adversary's claim to it, whatever that claim may be, conclusive of its own validity. It cannot, therefore, make the tax deed conclusive evidence of the holder's title to the land."

See also Black on Tax Titles, Section 253.
Kelly vs. Herrall, 20 Fed., 895.
Abbott vs. Lindenbower, 42 Mo., 162.
Bannon vs. Burnes, 39 Fed., 895.
Ewart vs. Davis, 76 Mo., 356.
McReady vs. Sexton, 29 Iowa, 356.

The same principle which denies the right to make a tax deed conclusive evidence that the tax sale is valid should deny the right to make journals conclusive evidence that our charter is invalid. Especially is this true in view of the manner in which these journals are kept, as shown by the resolution of the legislature quoted in the bill of complaint.

Assuming our bill to be true, as we must for the purpose of this demurrer, the defendants' attitude is this: An act of the legislature in form and title complying with all legal requirements was introduced and validly enacted into law; it was accepted by all parties as valid and hundreds of thousands of dollars were expended under it by the predecessors in interest of the plaintiff and thousands of acres of land were earned by them under it, and certificates given them of this fact. Yet because the confessedly hasty, careless and inaccurate entries in the legislative journals, for convenience abbreviated the title of the act conferring these rights, it is conclusively presumed to be void and plaintiff's rights defeated, notwithstanding the actual existence of the rights and the long acquiescence therein of all parties in interest.

Moreover such a ruling denies to this court as a court of equity the exercise of the wide and well established power which it possesses to correct mistakes and to adjudge rights of the parties as they really are.

Moreover, this case should, as a matter of right, be determined in favor of the plaintiff, even although the only words contained in the title were the following: "An act to incorporate the Atlantic, Suwannee River & Gulf Railway Co." Such a title would indicate a purpose to secure the construction of a railroad—a public highway. The donation of lands to such proposed company to aid the construction of the railroad would be a matter properly connected with the object expressed in the title, as appears from the settled policy of the State, which has been using these lands to aid railroad construction for upwards of half a century.

See *State vs. Jacksonville Terminal Co., 41, Fla., 363,* which is a good example of how liberal the courts are in determining what is to be deemed incidental to the accomplishment of the object of a statute.

There are decisions in other states, which are directly in point. Thus, in Hope vs. Mayer, 72 Georgia, 246, it is said:

> "Where it appears from the whole act that the great purpose and object was to create a corporation to lay out and construct a railroad between certain points, any instrumentality authorized by the act in aid of, to conduce to, and to assist the one great purpose of the act, is not a different subject matter; and the act is not unconstitutional as containing more than one subject matter or matter different from that expressed in the title. Therefore, the inclusion in the act of 1872, "*to incorporate the Gainesville, Jefferson and Southern R. R., and for other purposes* therewith connected," of a provision that any corporate town or city of this State interested in the construction of said road might subscribe to the capital stock of the company by an election to be held for that purpose, relates to a mat-

ter properly connected with the subject matter of the act, and such a provision is valid."

In Connor vs. The Green Pond, Walterboro & Branchville Railroad Co., 23 S. C., 427, it is held, that "An Act to incorporate the Green Pond, Walterboro & Branchville R. R. Co." does not relate to more than one subject expressed in its title, even though the act contains, besides the charter, provisions authorizing the County of Colleton to subscribe in county bonds to the capital stock of the company.

In the case of the Supervisors of Schuyler County vs. Rock Island & Alton R. R. Co., 25 Ill., 181, 183, decided by the Supreme Court of Illinois, it was held that where the title was "An act to incorporate the Rock Island and Alton R. R. Co.;" and the act besides incorporating the company authorized the counties to subscribe to the stock of the company, such provision was valid.

See also to same effect: Mahomet vs. Quackenbush, 117 U. S. Supreme Court Reports, 511; Fireman's Association vs. Lounsbury, 21 Ill., 511; People vs. Mahany, 13 Mich., 481; Cooley on Constitutional Limitations, 205-206.

These decisions are based upon unanswerable logic, and establish the doctrine that where the title of an act provides for the incorporation of a railroad company, the *construction* of a railroad is to be deemed the object of the act, and any provision therein for granting *state*, municipal, or county aid is germane to the object of the act. In Florida, the granting of the public lands is even more certainly germane, if that is possible, for these lands were given to the state for that purpose.

These authorities also establish that it would have been unnecessary to make the title broader than the following: "An act to incorporate the Atlantic, Suwannee River & Gulf Railway Company," and that the other provisions of the title are surplusage. But their presence does not invalidate the act, as they relate to matters germane to the object of the act.

State vs. Jacksonville Terminal Co., 41 Fla., 363.
State vs. Arnold, 140 Indiana, 628.

In Holton vs. State, 28 Fla., 308, it was held, that "A liberal rule of construction should be applied when the constitutionality of legislative enactments is questioned, and every reasonable doubt should be resolved in favor of the constitutionality of the act."

In Duval County vs. Jacksonville, 36 Fla., 196, it was held that "When a matter is so closely connected with the subject of the act as to create a doubt whether it is not included within it, the courts will not consider the question whether the legislative action upon it violates the constitutional prohibition relating to the titles of laws."

In this case it was further held that "If the courts entertain a well-founded or reasonable doubt as to the constitutionality of an act, it should, in deference to the legislative judgment, be upheld."

In State vs. Hocker, 36 Fla., 358, it was held, that "In passing upon the constitutionality of statutes generally, no matter from what standpoint the assault be made, it is a well settled and cardinal rule that nothing but a clear violation of the constitution will justify the courts in overruling the legislative will, and where there is a reasonable doubt as to the constitutionality of an act, it

must be resolved in favor of the act and it should be upheld."

In this case it was also held that "Only such legislative acts should be overthrown as are clearly and obviously offensive to their spirit and meaning."

THE STATE AND TRUSTEES ARE EQUITABLY ESTOPPED, UNDER THE CIRCUMSTANCES SET OUT IN THE BILL, AND ADMITTED BY THE DEMURRERS.

The State received the consideration contracted for, and its officers and the Internal Improvement Board acted under and complied with the act and contracted with the Company on the faith of its validity, and all parties concerned acquiesced in its validity and binding obligation for many years.

Defendants will not now be permitted to set up the unconstitutionality of the act. And the Federal Courts will exercise their own independent judgment upon the subject.

Pleasant Township Co. vs. Etna Life Ins. Co., 138, U. S., 67-72-73.

Burges vs. Sligman, 107 U. S., 20-23.

POINT OF LAW.

Where there had been no decision at all of a State Court as to the constitutionality of an act before rights had been acquired thereunder, the Federal Court will exercise its own independent judgment as to the validity and obligation of contracts made under the act before the State Court held it unconstitutional.

Anderson vs. Santa Anna, 116 U. S., 356-362.

ANOTHER VIEW.

There is no question that the act of the legislature was valid to the extent of granting a franchise to the railroad company and under that act such company had authority to build the railroad it did build.

The legal title to the lands in question was in the trustees, and upon the averments of the bill they contracted to convey that title to the railway company in consideration that the company would build the road. The company has performed its part of the contract, and the only t. 'ng remaining to be done is a conveyance of the legal ti 'e to the company or its assignees.

The state is not now complaining and has not complained either in its corporate or sovereign capacity. It has not sought by suit or otherwise to set aside or annul such contracts between the trustees and the company. In conscience and good morals and natural equity it could not do so because it has received the same consideration as if the validity of the act had never been questioned. Yet the state, the cestui que trust, is the only party on earth that has any right in conscience or morals or we think in law to object to such contracts.

It has been the policy of the state for forty years to give away or grant portions of the swamp or overflowed lands to railroad companies to aid them in constructing railroads in the state. The acts of the legislature making such grants are numerous and such acts and such policy cannot be gainsaid or questioned.

That policy has been carried out in the present case and the railroad has been built, and the state by its silence raises no objection to a conveyance of the legal title thus earned to the company or its assignees.

Can the trustees object on the ground that the act has been declared invalid?

ESTOPPEL.

The trustees are estopped by their contract and by long acquiescence, and they have no interests to promote by raising the objection that the act so far as it grants lands was invalid. They have no personal interests. And it is not their duty to raise the objection on behalf of the cestui que trust, the State of Florida, because the state is competent to protect its own interests and for fifteen years after the act was passed the state and legislature have acquiesced in the right of the company to have title to the lands.

The decided cases support the view that the state itself may be estopped, and there can be no question but that these trustees may be estopped. And there can be no stronger case for the invocation of and application of the doctrine of estoppel.

Nor does its application involve any disrespect to or denial of the doctrine declared in Town of South Ottawa vs. Perkins, 94th U. S., 260, 268, followed in Wilkes County vs. Coles, 180 U. S., 506-520 on the subject of estoppel.

Those cases decided that a county or municipality, when sued by a holder of its bonds could not be estopped from showing that the assumed act of the legislature under the authority of which alone such bonds were issued, was not constitutionally passed. There the obligor of the bonds, the party against whom the suit was brought and the real party in interest, and the only party to suffer any pecuniary damage by holding the bonds legal, raised

the question of the invalidity of the act of the legislature.

But at bar, the only party that can suffer any loss or damage is the State of Florida. *While the legal title is in the trustees the beneficial ownership of the lands is in the state.*

In State of Florida vs. Anderson, 91 U. S., 669-676, it was held that the state was the *real owner* and that the legal title was held by the trustees *merely as agents of the state,* and that the state is the "beneficial proprietor." And the repeated acts of the legislature of Florida granting these lands to aid in the construction of railroads, and the decisions of the Florida court all establish that the state is the real owner and the trustees, its agents.

We therefore insist that the trustees, under the averments in the bill, are not in a position to raise the question of the invalidity of the act, but are estopped from so doing by every consideration of good conscience, natural and legal equities. And therefore plaintiff states a good cause of action notwithstanding the Florida court has declared the act of 1893 invalid so far as it made a land grant.

ANOTHER POINT.

If there never had been any pretense of any land grant by legislative act, and these public trustees without any such act had made the contracts set up in the bill, and the state made no objection thereto, for fifteen years remained silent, and received the benefit of the construction of the railroad in accord with its pronounced policy of applying these lands to aid in building railroads, the trustees could not in a suit to compel them to convey title in accordance with such contracts set up that the state *had not by legislative act authorized such conveyance.*

As long as the state has acquiesced in the right of the trustees to make such contracts, it does not lie in the mouths of either to say they had no authority to make them, when the making of them is not a breach of duty as trustees and when by such contracts the lands are appropriated to accomplish a pronounced and long continued public policy indorsed by such trustees.

ELIMINATION OF THE STATE'S INTERESTS.

We submit that the interests of the state, either in its corporate or sovereign capacity, should be eliminated from the case in the present state of the record; and this being done, if the trustees are estopped from raising the question of the invalidity of the act. so far as it granted land, then a good cause of action for relief is made out by the bill.

Eliminate the interests of the state, and the trustees are defending and litigating exclusively for the benefit of their grantee, Wade, to whom they have conveyed with notice of plaintiff's equities. And the doctrine of estoppel in a proper case applies to them, though public trustees, as fully as to any other litigant.

In U. S. vs. Bell T. Co., 167 U. S., 225-264-265, the court speaking of the rights of the United States *as a litigant* said:

> "When it has no proprietary or pecuniary result "in setting aside the patent; is not seeking *to dis-* "*charge its obligations* to the public; when it has "brought the suit simply to help an individual; mak- "ing itself, as it were, the instrument by which the " right of that individual against the patentee can

"be established, then *it becomes subject to the rules "governing like suits between private litigants.*"
Id. 265.

Now one of these rules is to hold in a proper case, that a party is estopped from making certain defenses.

Now at bar the state's interest as such being eliminated, and regarding this Board of Trustees as mere agents of the state as has been held in State vs. Anderson supra, the trustees have no pecuniary interest whatever. The money they have received from Wade as their grantee is not their money but is the money of the state held by them as the state's agent. The state by its silence does not want that money, and has already received a consideration for the lands conveyed to Wade in the construction of the railroad.

If plaintiff cannot reach the legal title because Wade is an innocent purchaser, then the money received for the lands belongs to plaintiff. In any event, it is not the money of the trustees, and that is all that is necessary to subject them to the rule of estoppel contended for.

And it has been held in numerous cases that even a state is subject to the rule of estoppel.

In People of Vt. vs. Society etc., 2 Paine, 545, Justice Thompson said on p. 558: "That the doctrine of estoppel applies to a State as well as to a *private person cannot be questioned.*" Citing Com. vs. Proprietors, 10th Mass., 155.

Justice Thompson further said on p. 562: "The law has not been repealed, or *any measures* taken to resume possession of the land *on account of any breach of trust.* * * * * * even admitting that might be done by the State," which supports our position in this branch of the case .

In a closely analogous case of Continental Improvement Co. vs. Phelps, 47th Mich., p. 303, the court delivered itself as follows:

> "The point to be first noticed is one made by defendant in error that the act of 1871 conflicted with the constitutional provision that 'no law shall embrace more than one object, which shall be expressed in the title,' and therefore never became a law. The object, it is said, was not disclosed by the title with constitutional distinctness, and the provisions were not sufficiently coherent to be joined in one act. The point requires no special discussion. It is now more than ten years since the act was passed and dovetailed into our system of important statutes. The people and the government have acquiesced in it as a piece of legislation lawfully enacted and interests of vast magnitude have meanwhile sprung forth and flourished under it. The whole country has acted on the faith that it originated legitimately and constituted a valid statute; and if we were satisfied that the Legislature stumbled and overlooked something which a nice regard for the clause referred to would have prompted, *we should deem it our duty to yield to the long practical construction and acquiescence,* and decline to set up a view which would reach back and overturn the statute and uproot and destroy an array of interests it would be difficult to either measure or number. But we think the objection is fully refuted by the course of previous decisions which substantially cover it."

In Attorney General vs. Ruggles, 59th Mich., 123, text 138, the court announced the same principle.

In the case of State of Michigan vs. R. R. Co., 89th Mich., 481, the question was directly involved and title to swamp and overflowed lands was involved, and the

court held the state was estopped and cites numerous Federal cases on pp. 486-489, and on p. 481 said:

> "That the State, as well as individuals, may be "estopped by its acts, conduct, silence,and acquies- "cence, is established by a line of well-adjudicated "cases; citing U. S. vs. Military Road Co., 41 Fed. "Rep., 493; U. S. vs. Railway Co., 37 Id., 68; U. S. "vs. McLaughlin, 30 Id., 147; Pengra vs. Munz, 29 "Id., 830; Hough vs. Buchanan, 27 Id., 328; State vs. "Milk, 11 Id., 389; Cahn vs. Barnes, 5 Id., 326; Com. "vs. Heirs of Andre, 3 Pick. 224; Attorney General "vs. Ruggles, 59 Mich., 124."
>
> State of Michigan vs. F. & P. M. R. R. Co., 89 Mich., 481.

POWER OF TRUSTEES TO SELL AND CONVEY INDEPENDENT OF ANY ACT OF THE LEGISLATURE, SUBSEQUENT TO 1855.

It is true according to the allegations of the bill that it is recited in the contracts by the trustees that they are entered into in pursuance of the Act of 1893. See Rec. p. 12, folio 16. And it will be and is contended that the trustees had no authority independent of said act to make such contracts, and as that part of the act granting lands has been declared by the court invalid, such contracts have ceased to be binding obligations of the trustees.

This argument admits that such contracts are obligatory when made with the state's consent. But the argument that such consent can only be found in an act of the legislature expressly directing such contracts to be made is not sound.

Such consent may be found and presumed from long

acquiescence, and even a grant may be presumed from lapse of time.

Express assent by legislative act is not essential, if the state is estopped as we think it is from denying assent, nor is such express assent essential when the state has acquiesced in the right of trustees to make such contracts for nearly forty years, and does not now make any objections thereto, and as we have argued is the only existing party that can object.

Again, if the trustees cannot raise the question of the invalidity of the Act of 1893, as a land grant, as contended and the state acquiesces, that dispenses with such express consent contended for.

WRONG AUTHORITY CITED.

The following principle was declared in Wilkes County vs. Coles, 180 U. S., 506, in the words of the court as follows:

> "The principle is reaffirmed that the recital in a "municipal bond of a wrong act as authority for their "being issued does not preclude a holder of such "bond from showing that independently of such act "there was power to issue the bonds."

The same principle was announced in Loeb vs. Columbia Town Trustees, 179 U. S., 472,where held that though a section of a law was void the bill stated a case for relief without it and independent of it.

And by a parity of reasoning, if the trustees can be held bound on any ground by estoppel, acquiescence or otherwise, to perform their contracts independently of the Act of 1893, the court can compel them to do so.

We maintain that the bill states a good cause of action against the defendants notwithstanding the decision of the state court that part of the Act of 1893 granting lands was invalid, and without relying at all upon that part of such act.

POWER TO SELL.

The Internal Improvement *Act of 1855 by which* the title was vested in the trustees, will be found in Appendix A.

By section 2 (Appendix A), the title is vested in the trustees consisting of the Governor, Attorney-General, Comptroller, State Treasurer and Commissioner of Agriculture and their successors in office, and by express provision of that section they are vested with power *"to sell and transfer said lands to the purchasers and receive payment for the same.*

They did contract to sell under the averments of this bill and in the eye of the law have received payment therefor, because the state has received payment by the building of the railroad. They are *mere agents* of the state, and if the trustees had received money instead, it was not *their money but the money of the state.* As the *state is content* with the consideration received, the trustees are estopped to say that they could only sell for cash, without the direction of a legislative act.

The result is they had express power to sell and convey, they have exercised the power to sell, the consideration has been received, and it is their plain duty to make the transfer of title.

The statute, (Sec.2, Appendix A), does not limit their sales *for money.* Their power is *to sell, transfer and receive payment.* If they do sell for money, it directs how

surplus moneys derived therefrom shall be invested, but they may receive as payment any consideration in harmony with and in the execution of their trust.

In the case of the Trustees vs. Gleason, 15 Fla., 384, it was distinctly ruled that these trustees may sell and appropriate part of these lands for the purposes of drainage of other lands without any money consideration. That was a contract for drainage by digging ditches. Gleason had performed his part of the contract and the court held that it would compel the trustees to perform their part by conveying the lands.

It is true in that case Gleason was to pay $40.00 for every 640 acres, a mere nominal consideration of *6 4-10 cents per acre,* but the court based its opinion upon the broad ground that they could contract to sell for the consideration of drainage alone, where the *drainage would tend to enhance the value of other contiguous lands.*

See Opinion in above case, pp. 384.

In that case the trustees contended that the contract was ultra vires as to the trustees, the court held it was not, and on pages 397-398 said:

> "The appellants have alleged that the contract set "up in the bill is illegal and void, is beyond their "power as trustees, and that a court of equity will "not decree performance upon their part. A trus- "tee, who comes into a court of equity alleging want "of power and illegality in his contracts in reference "to the trust committed to his care, and who asks a "court, for this reason, to deny relief to a party who "alleges performance upon his part, occupies a "position which cannot be commended. The trustee, "however, is yet to be heard from, and his answer

"may explain all the circumstances. In such a case "the specific performance might perhaps be denied, "in the interests and in behalf of the cestui que "trust, and the party left to such a remedy against "the property of the trustees as the laws afforded "him, if any."

And in Trustees vs. The St. Johns River R. R. Co., 16th Fla., 531, in the opinion it was expressly ruled that a grant of these lands to aid railroad companies to build railroads through them was a lawful appropriation for the purposes of the trust, and tended to drain other lands and make them more valuable, and *that the construction of a railroad was a good consideration for the grant.*

Opinion, pp. 545-549.

Therefore there is no defense in the theory that the conveyance of these lands to plaintiff would be either a diversion of the trust funds or without consideration.

In Hawkins, Appellant vs. Trustees, 34th Fla., 405, the court expressly declares that the trustees "*were the agents of the state with respect to said fund.*" And we again insist that as such agents they are estopped from denying their duty to convey to plaintiff. The contracts were for the benefit of the trust, they had power to make them apart from the Act of 1893, the consideration has been received, and every element exists on which equity decrees specific performance.

GROUNDS OF DEMURRER.

The grounds, No. 7-11-12-13-14 of the demurrer by the trustees admit the legal title is in them, and imply an argument (which is not sound however) that the state

legislature had no power to grant the lands to any railroad company or otherwise control them in appropriating the lands for the purposes of the trust.

Then, accepting that view, the trustees had the power to convey these lands to the railway company independent of the Act of 1893, and as shown such a conveyance being in execution of their trust, as held in 16th Fla., supra, and not a violation of it, the trustees had complete power to make the contracts set up in the bill, and will be compelled to perform them.

In conclusion we affirm that the position contended for by the defendants would work a divesture of title without a hearing or an opportunity of being heard.

The clauses in our Federal constitution guaranteeing the law of the land and due process of law, have always been held to include the opportunity to investigate any defenses which might affect the decision of the court or tribunal. The opportunity to defend implies notice of an official inquiry into the facts, and notice and hearing are necessary to due process of law—are indeed the essential elements thereof.

McVeigh vs. United States, 11 Wall., 259.
Galpin vs. Page, 18 Wall., 350.
Winsor vs. McVeigh, 93 U. S., 277, (23:916).
Ex parte Wall, 107 U. S., 289, (27:562).
Cooley's Constitutional Limitations, 253.
Reynolds vs. Stockton, 140 U. S., 254, (35:464).
Hovey vs. Elliott, 167 U. S., 407-8, (42:215),
Chicago, Burlington etc. R. R. vs. Chicago, 166 U. S., 226.
Fayerweather vs. Ritch, 195 U. S., 276; text 297-8-9, et seq. and authorities cited.

Judgments obtained without a hearing are void, and may be attacked collaterally.

Reynolds vs. Stockton, supra.
Hovey vs. Elliott, supra.

We therefore submit that, whether the case is ruled by the substantial equities in the plaintiff's behalf, as shown by the bill and admitted by the demurrers, or by the strict letter of the law governing this case, the plaintiff is entitled to succeed. The decision of the court below should be reversed.

All of which is respectfully submitted.

THOMAS F. McGARRY,
Solicitor for Appellant.

APPENDIX.

A

INTERNAL IMPROVEMENT ACT.

LAWS OF THE STATE OF FLORIDA.

Passed at the Seventh Session of the General Assembly, 1854-'5.

James E. Broome, Governor; F. L. Villepigue, Secretary of State; T. W. Brevard, Comptroller of Public Accounts; Charles H. Austin, State Treasurer; M. D. Papy, Attorney-General; H. V. Snell, President of Senate; D. G. Livingston, Secretary of the Senate; W. F. Russell, Speaker of the House; Hugh A. Corley, Clerk of the House.

CHAPTER 610.—[No. 1.]

AN ACT to provide for and encourage a liberal system of Internal Improvements in this State.

WHEREAS, The Constitution of this State declares "that a liberal system of Internal Improvements, being essential to the development of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvements in relation to *Roads*, Canals and Navigable Streams, and to provide for a suitable application of such funds as may be appropriated for such Improvements," therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened,* That so much of the Five Hundred Thousand Acres of Land granted to this State for Internal Improvement purposes, by an Act of Congress,

passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such of said lands heretobefore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the Swamp land or lands subject to overflow, granted to this State by an Act of Congress, approved September 28th, A. D. 1850, together with all the proceeds that have accrued, or may hereafter accrue to the State from the sale of said lands, are hereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this Act.

SEC. 2. *Be it further enacted,* That for the purpose of assuring a proper application of the said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five Trustees, to-wit: in the Governor of this State, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General and the Register of State Lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers, and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in Stocks of the United States, Stocks of the several States, or the Internal Improvement Bonds issued under the provisions of this Act, and drawing not less than six per cent. annual interest; also, the surplus interest accruing from such investments, and to pay out of said fund agreeably to the provisions of this Act, the interest, from time to time, as it may become due on the bonds to be issued by the different Railroad Companies under authority of this Act; also, to receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of Railroad is completed) on the entire amount of the bonds issued by said Railroad Company, and invest the same

in stocks of the United States, or State securities, or in Said Trustees shall also invest the surplus interest of said sinking fund investment as it may accrue. Said Trustees shall also demand and receive from each Railroad Company named in this Act, the amount due to the Internal Improvement Fund from said Railroad Company, according to the provisions herein contained, on account of interest on the Bonds issued by said Company, and refusal or neglect on the part of the President and Directors of any Railroad Company herein named to comply with the provisions of this Act, as to the payment to said Trustees of the amount due and payable to the fund, as provided in sections eleven, twelve and thirteen, on account of interest and sinking fund, the individual property of each and all the Directors, shall be liable in an action of debt to said trustees for the amount due and unpaid, with 20 per cent. interest until paid.

SEC. 3. *Be it further enacted,* That all Bonds issued by any Railroad Company under the provisions of this Act, shall be recorded in the Comptroller's office and so certified by the Comptroller, and shall be countersigned by the State Treasurer, and shall contain a Certificate on the part of the Trustees of the Internal Improvement Fund that said Bonds are issued agreeably to the provisions of this Act, and that the Internal Improvement Fund, for which they are Trustees, is pledged to pay the interest as it may become due on said Bonds. All Bonds issued by any Railroad Company under the provisions of this Act, shall be a first lien or mortgage on the road bed, iron, equipment, work-shops, depots and franchise; and upon a failure on the part of any Railroad Company accepting the provisions of this Act, to provide the interest as herein provided on the Bonds issued by said Company, and the sum of one per cent. per annum, as a sinking fund, as herein provided, it shall be the duty of the Trustees, after the expiration of thirty days from said default or refusal, to take possession of said Railroad Company and all its property of every kind, and advertise the same for sale at public auction to the highest

bidder, either for cash or additional approved security, as they may think most advantageous for the interest of the Internal Improvement Fund and the bond holders. The proceeds arising from such sale shall be applied by said Trustees, to the purchase and cancelling of the outstanding bonds issued by said defaulting Company, or incorporated with the sinking. fund, until all the outstanding bonds are discharged, under the penalty of an annullment of the contract of purchase, and the forfeiture of the purchase money paid in.

SEC. 4. *Be it further enacted,* That a line of Railroad from the St. Johns River, at Jacksonville, and the waters of Pensacola Bay, with an extension from suitable points on said line to St. Marks River, or Crooked River, at White Bluff on Apalachicola Bay, in Middle Florida, and to the waters of St. Andrews Bay, in West Florida, and a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida; also a Canal from the waters of St. Johns River on Lake Harney to the waters of Indian River, are improvements to be aided from the Internal Improvement Fund, in manner as hereinafter provided.

SEC. 5. *Be it further enacted,* That the several Railroads now organized or chartered by the Legislature, or that may hereafter be chartered, any portion of whose routes as authorized by their different charters, and amendment thereto, shall be within the line or routes laid down in section four (4) shall have the right and privilege of constructing that part of the line embraced by their charter, on giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this Act, specifying the part of the route they propose to construct; and upon the refusal or neglect of any Railroad Company, now organized to accept, within six months from the passage of this Act, the provisions of the same, any other Company, duly authorized by law, may undertake the construction of

such part of the line as they may desire to make, and which may not be in progress of construction under a previous character.

SEC. 6. *Be it further enacted,* That before any Railroad Company shall be entitled to the provisions of this Act, said Railroad Company shall first grade continuously, twenty miles according to the following specifications:

First.—The line of Road for sixty feet from the center shall be cleared of all standing timber.

Second.—The grading shall be for a single track except at depots, turnouts and similar places, where it shall be wider if required by the State Engineer, with a road bed twenty feet wide in cuttings, with ditches from two to three and a half feet in depth below grade, with such widths as the State Engineer may direct, and eighteen feet wide on embankments, at the grade line, with slope of one and a half feet base to one foot rise; and in all excavations and embankments, they shall be so constructed as to have a perfect drainage, and not permit any standing water to come within three feet of the lower side of the cross tie.

Third.—All the cross ties shall be delivered on the line of the Road and be of heart yellow pine, cypress, white, yellow, post, live or spanish oak, white or red cedar, and not less than nine feet long, with not less than nine feet face, and eight inches in thickness, and shall be well and carefully bedded, and laid within two and a half feet from centre to centre.

Fourth.—At all water ways, sufficient space shall be left for the unobstructed passage of water; and at all points on the line of the Road where side ditches can be cut that will carry off the surface water, they will be constructed by the Company under the direction of the State Engineer.

Fifth.—In the crossing of all streams, the bridges shall be constructed according to plans approved by the State Engineer; and over all streams that are navigated,

suitable draws shall be put in to admit the passage of boats or vessels usually navigating the same, to be decided by the State Engineer.

Sixth.—The gauge of the different Railroads shall be uniformly five feet, and connected continuously, so that cars, or trains of cars can pass on all the routes indicated, without changing freight. And it shall be the duty of the different Railroad Companies to adopt a uniform tariff for transporation of passengers and for hauling the freight in the cars of another Company, upon usual and equitable terms, and no discrimination shall be made by one Company against the freight or passengers of another Company.

Seventh.—The iron rail used shall weigh not less than sixty pounds per lineal yard, and shall be of the best quality of iron, and well fastened to the cross ties, with the best quality of spikes and plates.

Eighth.—The entire equipment shall be of the first class and shall at all times be sufficient for the prompt transportation of all the passengers and freight ordinarily offering.

Ninth.—The grade on no portion of the routes indicated by this Act, shall exceed forty-five feet per mile, and no single curve shall exceed three degrees of curvature, or be adopted unless approved by the State Engineer.

Sec. 7. *Be it further enacted,* That after any Railroad Company shall have graded twenty miles of Road bed continuously, and furnished the cross ties agreeably to the specifications of this Act, and shall give notice to the State Engineer, it shall be his duty to examine personally said section of twenty miles, and if, after full examination, he shall approve the construction of said twenty miles, then it shall be his duty to certify the same to the Trustees of the Internal Improvement Fund; and on the completion of the grading and furnishing of the cross ties of each additional ten miles continuously, the State Engineer shall also examine the same, and, if constructed in accordance with the provisions of this Act,

shall certify the same to the Trustees of the Internal Improvement Fund.

SEC. 8. *Be it further enacted,* That on the completion of the grading and the furnishing of the cross ties of twenty miles continuously, and every additional ten miles, as provided by this Act, said Railroad Company are hereby authorized to issue Coupon Bonds, having not more than thirty-five years to run, and drawing not more than seven per cent. annual interest, payable semi-annually in the City of New York or Tallahassee, at the option of the purchaser, at the rate of eight thousand dollars per mile for the purchase and delivery of the iron rail, spikes, plates and chairs, and after the rail has been laid down on the line, the additional sum of two thousand dollars per mile, for the purchase of the necessary equipments; and said bonds shall always afterwards constitute and be a first lien or mortgage upon the road bed, iron, equipment, work-shops, depots and franchise.

SEC. 9. *Be it further enacted,* That it shall be the duty of said Railroad Company to deposit said Bonds with the Comptroller of Public Accounts, to be by him recorded and the record certified on each Bond; and the State Treasurer shall enter, in a book to be kept for the purpose, the amount of each Bond with the rate of interest, the time it becomes due, and shall countersign the same; and it shall also be the duty of the Trustees of the Internal Improvement Fund, after having received a certificate from the State Engineer that twenty miles, or ten miles, as the case may be, have been graded in all respects agreeably to the specifications of this Act, and deliver them to the said Railroad Company: *Provided,* The President and at least four of the Directors, file with the Trustees of the Internal Improvement Fund a statement under oath that the necessary quantity and quality of iron for said twenty or ten miles as the case may be, has been purchased, and is within the jurisdiction of this State, and paid for, or to be paid for, with said Bonds or their proceeds: Provided, further, That before said

Trustees shall deliver to said Railroad Company the said Bonds, said Company shall deposit with the Trutees of the Internal Improvement Fund, the first semi-annual instalment of interest on the amount of Bonds certified to by said Trustees, to meet the same when due, (or they shall retain the Coupons for the first semi-annual interest) and shall give to the Trustees of the Internal Improvement Fund a Bond with approved security, that said quantity and quality of iron shall be laid down on the line of their Road within six months after the said Bonds are issued.

Sec. 10. *Be it further enacted,* That any Railroad Company receiving said certified Bonds, shall apply the same or their proceeds to no other purpose than purchasing the iron rail, spikes, plates or equipments; and before any additional Bonds shall be certified by the Trustees of the Internal Improvement Fund, the iron rail shall be laid on that part of the route for which the Bonds were issued, and so on continuously until the line is completed.

Sec. 11. *Be it further enacted,* That it shall be the duty of the President and Directors of every Railroad Company accepting the provisions of this Act, while the Road is under construction, to report to the Trustees of the Internal Improvement Fund every six months, under the oath of the President and at least two of the Directors, the gross receipts of said Company from the traffic of the Road for the past six months, the cost for transportation and repairs, and the total amount of the net receipts of said Company; and it shall be the duty of the President and Directors to pay to the Trustees of the Internal Improvement Fund fifty per cent. of said net receipts every six months, which sum or sums shall be applied by the Trustees of the Internal Improvement Fund towards the payment of the interest of any Bonds issued by said Company.

Sec. 12. *Be it further enacted,* That every Railroad Company accepting the provisions of this Act shall, after

the completion of the Road, pay to the Trustees of the Internal Improvement Fund at least one-half of one per cent. on the amount of indebtedness, or Bond account, every six months, as a sinking fund, to be invested by them in the class of securities named in section two, or to be applied to the purchase of the outstanding Bonds of the Company; but it shall be distinctly understood, that the purchase of said Bonds shall not relieve the Company from paying the interest of the same, they being held by the Trustees as an investment on account of the sinking fund.

SEC. 13. *Be it further enacted,* That if, on completion of any of the Roads indicated in section four, the net earnings should be less than sixty per cent. on the capital stock paid in and bonded debt of said Company, first deducting the one per cent. per annum paid in to the sinking fund, it shall be divided pro rata between the Stock account paid in and bonded debt, and the Internal Improvement Fund shall pay the deficiency due on the account of interest from time to time, as it may fall due. In the event the net earnings are over six per cent. on the Capital Stock paid in and bonded debt and sinking fund of one per cent., then the President and Directors shall first pay into the hands of the Trustees of the Internal Improvement Fund the amount due on the interest account of the bonded debt, in addition to the provision for the Sinking Fund, every six months.

SEC. 14. *Be it further enacted,* That for all payments made by the Trustees of the Internal Improvement Fund on account of interest for any Railroad Company agreeably to the provisions of this Act, said Trustees shall demand and receive from said Railroad Company equal amounts of the Capital Stock of said Company, which Stock shall entitle the Internal Improvement Fund to all the privileges and advantages of private Stockholders.

SEC. 15. *Be it further enacted,* That on the routes indicated for the construction of the different lines of

Railroad, the State hereby grants to each of the different Companies that may hereafter construct portions of such line or route, the alternate Sections of State Lands on each side for six miles, but the title to the same shall not vest in the Company except as the Road progresses, and not until thirty miles are completed, when the Company may sell one-half of the same within said thirty miles; and on the completion of thirty additional miles, then they may sell the balance, of their lands remaining unsold in the first thirty miles, and so on for each division of thirty miles until the Road is completed.

SEC. 16. *Be it further enacted,* That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the Public Lands included in the Trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and make such arrangements for the drainage of the swamp or overflowed lands, as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land, and the said Trustees shall encourage actual settlement and cultivation of said lands by allowing pre-emptions under such rules and regulations as they may deem advisable: *Provided,* That in no case shall a pre-emption for more than one section of land be granted to any one settler.

SEC. 17. *Be it further enacted,* That as the Board of Internal Improvement recommended the construction of a navigable canal connecting the waters of the St. Johns's with those of the Indian River, the State Engineer is hereby authorized to make a final location of the same as soon as practicable, and furnish detailed estimates and plans for the information of persons desirous of engaging in the work, and invite bids for its execution for one year—the bidders to specify the amount for which they will do the work, and the mode and manner in which payments are to be made, whether in lands or money, or in portions of each. And the Trustees of the Internal Improvement Fund are hereby authorized to pay out of

said Fund, as the work progresses, the whole amount agreed upon by the terms of the contract: *Provided,* The entire cost shall not exceed Four Thousand Dollars in money and Four Thousand acres of land per mile: *Provided, further,* That the Trustees of the Internal Improvement Fund shall be of the opinion that this sum in money can be applied to said purpose without impairing the efficiency of the Fund for Railroad purposes.

SEC. 18. *Be it further enacted,* That the Capital Stock of any Railroad Company accepting the provisions of this Act, shall be forever exempt from taxation, and the Roads, their fixtures and appurtenances, including work-shops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the Roads, shall be exempt from taxation while the Roads are under construction, and for the period of thirty-five years from their completion—and that all the officers of the Companies, and servants, and persons in the actual employment of the Companies, be and are hereby exempt from performing ordinary patrol or militia duty, working on public roads and serving as jurors.

SEC. 19. *Be it further enacted,* That should any of the officers, or persons in the employ of any Railroad Company in this State, make any fraudulent statement of accounts, or make false issues or transfers of the Capital Stock or Bonds of any Railroad Company, or shall fraudulently apply any money or property in his charge, belonging to said Company, or in charge of said Company, to his individual use or benefit, or to the benefit of any other person, it shall be considered a felony, and on conviction in any Court having jurisdiction of the same, shall be punished by fine at the discretion of the Court, and imprisonment of not less than two nor more than ten years.

SEC. 20. *Be it further enacted,* That after the routes indicated have been actually surveyed and adopted, and a plat therefor deposited in the office of the

Secretary of the State, it shall not be lawful for any other Railroad to be built, cut, or constructed in any way or manner, or by any authority whatsoever, running laterally within twenty-five miles of the route so adopted, unless by said Company, or with the consent of the trustees of the Internal Improvement Fund and a majority of the Stockholders, at an annual meeting, on a Stock vote.

SEC. 21. *Be it further enacted,* That should the Government of the United States grant land to the State of Florida for the purpose of aiding in the construction of the lines of Railroad indicated, and their extensions, by general or special act, said lines of Railroad shall be entitled to all the benefits and advantages arising from said grant that the State of Florida would be entitled to by the construction of said lines of Railway and their extensions; and the Governor of the State is hereby authorized and required, should such an Act be passed by the Government of the United States, to direct said Railroad Companies to select said land, and, after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of land so selected, the number of each Section, fractional Section, or subdivision, and take such other action as may be necessary to fully secure the grant of lands to said Railroad Companies, subject to all the conditions and restrictions of the Act of Congress making such grant.

SEC. 22. *Be it further enacted,* That it shall be lawful for the Board of County Commissioners of any County or the Mayor and Council of any City, or the Trustees of any Town, through or near which such Railroads or their extensions may pass, or in which they may terminate, and they are hereby authorized, to subscribe and hold stock in said Company, upon the same terms and conditions, and subject to the same restrictions as other Stockholders: *Provided,* It shall be first submitted to the vote of the legal voters of said County, City or Town, to be held and taken at such times and places, and in such a manner, as said authorities respectively may ap-

point, whether or not stock shall be subscribed and taken; and if, when the vote be thus taken, it shall appear that a majority of the votes shall be in favor of such subscription, it shall thereupon be lawful for the Board of County Commissioners, City or Town Authorities, by agents by them appointed, to subscribe and take in such Company, such an amount of Stock as they shall determine; *Provided,* That in no case of County subscription the amount shall exceed fifty per cent. of the cost of construction through said County; and to issue the bonds of such County, City or Town, payable with interest at such times and places as they may deem proper, and dispose of the same for the payment of such subscription, pledging the faith and resources of such County, City or Town for the payment of such bonds and interest; and they shall from time to time levy and collect such a tax as shall be necessary to pay the installments of interest and the Bonds as the same become due, or to create a sinking fund for the gradual reduction of the same: *Provided,* That the rate of interest shall not exceed ten per centum per annum; or funds may be raised by such Board of County Commissioners, or City or Town Authorities, by tax, in such sums or installments as will meet such subscription, and the receipt for the payment of such tax shall entitle the payers thereof, for every one hundred dollars so paid, to have one share or more, as the case may be, of the stock so subscribed by said County Commissioners, City or Town, in said Company, and which receipts shall be assignable. No Stock held by any County, City or Town, shall be assignable by said County, City or Town, until the bonds issued for the purpose of procuring funds for the payment of said County, City or Town subscription shall be paid, except in exchange for such bonds.

Sec. 23. *Be it further enacted,* That in the event of the disagreement between any Railroad Company accepting the provisions of this Act, and the Postmaster-General, as to the compensation to be paid per mile by the Governor of the United States, to said Companies for

transporting the mail of the United States, on the routes indicated by this Act, the matter shall be settled by mutual agreement between the Postmaster-General and the Governor of the State, and the refusal on the part of any Railroad Company to perform the services required by the Post Office Department, for the compensation agreed on by the Governor and the Postmaster-General, shall subject said Company to a fine of one hundred dollars for each and every day they refuse to perform the said award, which shall be recoverable by an action of debt, by the Postmaster-General, but not if he be in arrears for more than one quarter's compensation to such Company.

Sec. 24. *Be it further enacted,* That no Branch Roads from the main line of Railroad, provided for by this Act, between the waters of Pensacola or Escambia Bay and the junction with the Florida Railroad, shall be made to the Northern boundary line of this State, until that part of the line between the Suwannee River and the Florida Railroad has been constructed: nor shall any such Branch Road be made to a point West of the Alapha River without the consent of all the Companies owning the several portions of the main line, and without the approval of the Trustees of the Internal Improvement Fund.

Sec. 25. *Be it further enacted,* That the completed portion of any Railroad authorized by this Act, shall carry the iron rails, spikes and plates or chairs required in the construction of any portion of the line indicated, at the uniform rate of two cents per ton per mile, and for such transporation shall receive in payment the Capital Stock of the Company for which the same was transported.

Sec. 26. *Be it further enacted,* That whenever any of the different Railroad Companies shall purchase and deliver to the County Treasurer, or to the City or Town Authorities, the Bonds issued by any County, City or Town, to pay the subscription of the Capital Stock of said

County, City or Town, or any portion of them, the Treasurer of said County, City or Town shall transfer an equal amount of the Stock of said Company to said Railroad Company, and it shall be the duty of the Treasurer of the County, City or Town Authorities to cancel and deface the Bonds exchanged.

SEC. 27. *Be it further enacted,* That after the Railroad Companies indicated by the provisions of this Act, shall, for five consecutive years, pay six per cent. on the Capital Stocks paid in, and the interest on the bonded Debt, and apply the sum of one per cent. yearly to a sinking fund on said debt, the Trustees of the Internal Improvement Fund may apply under the direction of the Legislature, the annual income arising from said Fund to other purposes of Internal Improvement, or to the support of Schools, so long as the said Company shall continue to pay the same. But should any of said Railroad Companies thereafter fail to provide the interest upon their bonded debt, and one per cent. annually as a sinking fund, then said fund shall pay the deficiency on the interest account, from time to time as it may arise.

SEC. 28. *Be it further enacted,* That the right of way through the State lands for two hundred feet in width, is hereby granted to the different Railroad Companies on the routes indicated, with the right to cut timber, and procure necessary earth and stone, from the adjacent land, to construct and repair the same, and whenever it is necessary to construct turn-outs or sidetracks, that this privilege may be extended to one hundred feet on each side of the Road, and of such side track.

SEC. 29. *Be it further enacted,* That the alternate sections of the Swamp and Overflowed Lands for six miles on each side may be granted by the General Assembly to such Railroad Companies, to be hereafter chartered, as they may deem proper, on their compliance with the provisions of this Act, as to the manner of constructing the Road and drainage, and the sale and trans-

fer of the alternate Sections thus granted shall be in accordance with the provisions of this Act.

SEC. 30. *Be it further enacted,* That no Bonds shall be issued to the Companies under the provisions of this Act, in aid of any part of their Roads not completed at the end of eight years, from the passage of this Act, and any Company failing to grade twenty miles of their Road within four years from filing notice of their acceptance of the terms of this Act, shall forfeit all right to its benefits.

SEC. 31. *Be it further enacted,* That in addition to the Bonds authorized to be issued in the preceding Sections of this Act, there may be issued by the proper Railroad Companies, Bonds to the amount of One Hundred Thousand Dollars for a Bridge crossing the Choctawhatchie River, and like amount for a Bridge crossing the Apalachicola River; Also One Hundred Thousand Dollars for the structures necessary to cross from the West side of Nassau River to Amelia Island, and Fifty Thousand Dollars for the crossing of the Suwannee River—which Bond shall be guaranteed and provided for in the same manner as those hereinbefore authorized: Provided, That said Bonds shall not issue except in payment of work done, and then only as the work progresses, upon the Certificate of the State Engineer that such work has been done, and the amount of Bonds issued is required for the payment thereof.

SEC. 32. *Be it further enacted,* That if any person shall, while in charge of a Locomotive Engine, or acting as the Conductor or Superintendent of a Car or train of Cars, or on the Car or train as a Brakeman, or employed to attend the Switches, Drawbridges, or signal Stations, on any Railway in this State, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction before any Magistrate, shall be punished by fine or imprisonment at the discretion of the Court.

(Passed the House of Representatives, December 29, 1854. Passed the Senate, January 2, 1855. Approved by the Governor, January 6, 1855.)

APPENDIX—B.

Motion to Substitute the Present Incumbents in the Offices of Governor and Attorney-General, in Lieu of Former Incumbents.

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 220.

RICHARD G. PETERS,
Plaintiff and Appellant.
vs.
NAPOLEON B. BROWARD, A. C. CROOM, W. V. KNOTT, W. H. ELLIS and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, NEILL G. WADE and SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

And now comes the appellant, by Thomas F. McGarry, his solicitor, and moves the Court to substitute Albert W. Gilchrist and Park Trammell as defendants in lieu of Napoleon B. Broward, and W. H. Ellis, for the reason that the said Albert W. Gilchrist has succeeded to the office of Governor of the State of Florida, as successor of the late Napoleon B. Broward, and the said Park Trammell has succeeded to the office of Attorney-General of said State, the said officers as Governor and Attorney-General being ex officio members of the Trustees of the Internal Improvement Fund of Florida.

This motion is based upon the Internal Improvement Act of Florida, and the stipulation of counsel now on file in this court and cause, consenting to such substitution.

THOMAS F. McGARRY,
Solicitor for Appellant.

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Supreme Court of the United States

Office Supreme Court U. S.
FILED
NOV 7 1911
JAMES H. McKENNEY,
Clerk.

OCTOBER TERM, 1910.

No. [redacted]49.

RICHARD G. PETERS,
Plaintiff and Appellant,
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and NEILL G. WADE, and THE SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from United States Circuit Court, Northern District of Florida.

SUPPLEMENTAL APPENDIX TO ACCOMPANY BRIEF FOR APPELLANT.

THOMAS F. McGARRY,
Solicitor for Appellant.

DREW, JACKSONVILLE 230572

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 220.

RICHARD G. PETERS,
Plaintiff and Appellant,
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and NEILL G. WADE, and THE SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from United States Circuit Court Northern District of Florida.

APPENDIX C.

SUPPLEMENTAL APPENDIX TO ACCOMPANY BRIEF FOR APPELLANT.

We respectfully submit, as a supplemental brief, for the purpose of using in argument, the entries from the journals of the House of Representatives and Senate of the Legislature of Florida, of the session of 1893, and also certain constitutional provisions and statute laws of the State of Florida.

ENTRIES OF HOUSE JOURNAL.

On page 78, under the head of introduction of bills, appears:

"By Mr. Gaskins, of Bradford:

"House Bill No. 99:

"To be entitled an act to incorporate the Atlantic, "Suwannee River and Gulf Railroad Company;

"Upon motion the rules were waived by a two-"thirds vote, and the bill was read the first time by "its title and referred to the Committee on Rail-"roads and Telegraphs."

On page 234, under the general head of reports of committees, appears:

"House of Representatives,
"Tallahassee, Fla., April 20, 1893.

"Hon. J. B. Johnston,

"Speaker of the House of Representatives:

"Sir: Your Committee on Railroads and Tele-"graphs to whom was referred—

"House Bill No. 99:

"A bill to be entitled an act to incorporate the "Atlantic, Suwannee River and Gulf Railroad Com-"pany;

"Beg leave to report that they have examined the "same, and recommend that it do pass with the "following amendments, to-wit:

"Section 1, by striking out all after 'be' in the "last line and insert 'standard.'

"Amend Section 3 in line 2 by striking out "one "hundred' and inserting in lieu thereof 'twenty-"five.'

"Strike out all of Section 19.

"Change Sections 20 and 21 to 19 and 20.

"Very respectfully,
"T. J. Cochran,
"Chairman of Committee.

"Which were read and the bills were placed with "the orders of the day for a second reading."

On page 250, under the head of bills and resolutions on second reading, appears:

"House Bill No. 99:
"To be entitled an act to incorporate the Atlantic, "Suwannee River and Gulf Railroad Company:
"Was read the second time, the amendments "adopted, and the bill and amendments ordered en- "grossed for third reading."

On page 308, appears:

"Mr. Mathews, Chairman of the Committee on "Engrossed Bills, made the following report:
"House of Representatives,
"Tallahassee, Fla., April 26, 1893.
"Hon. J. B. Johnston,
"Speaker of the House of Representatives:
"Sir: Your Committee on Engrossed Bills, to "whom was referred—
"House Bill No. 99:
"To be entitled an act to incorporate the Atlantic "*and* Suwannee River and Gulf Railroad Company;
* * * * *
"Beg to report them correctly engrossed.
"Very respectfully,
"George G. Mathews, Jr.,
"Chairman of Committee.
"Which was read and the Engrossed Bills placed "with the orders of the day for a third reading."

On page 315, under the heading bills on third reading, appears:

"House Bill No. 99:
"To be entitled an act to incorporate the Atlantic, "Suwannee River and Gulf Railroad Company:
"Was read the third time and put upon its pas- "sage.

"The vote was:

"Yeas—Messrs. Baltzell, Campbell, Cochran, "Daniel, Dell, Denham, Durrance, Dyal, Fletcher, "Floyd, Forman, Gaskins, Gainer, Gilchrist, Good- "bread, Hall, Hendry, Holland, Jackson, Johnson, "Kelley, Layne, Lee, Long, Mathews, Means, Michel- "son, Morse, Nelson, Nolan, Oliver, Pickett, Rawls, "Reid, Rowe, Shine, Ward, Wall, Walker, Wilder, "Wilson, Williams and Zim—43.

"Nays—Mr. Speaker, Messrs. Alexander, "Blocker, Fortner, Harp, Hamilton, McCaskill, Mc- "Kinnon and Rourke—9.

"So the bill passed, title as stated, and was "ordered certified to the Senate."

On page 615, appears:

"Senate Chamber,

"Tallahassee, Fla., May 15, 1893.

"Hon. J. B. Johnston,

"Speaker of the House of Representatives:

"Sir: I am directed by the Senate to inform the "House of Representatives that the Senate has "passed—

"House Bill No. 99:

"An act to incorporate the Atlantic, Suwannee River and Gulf Railroad Company;

"With the following amendment thereto:

"In Section 17, line 5, after the word 'railroad,' "strike out the following: 'And along the line of "any road or highway within the State, to be used "in the operation of its railroad and also;'

"And respectfully request the concurrence of the "House of Representatives to the said amendment.

"Very respectfully,

"C. A. Finley,

"Secretary of the Senate.

"Which was read and the Senate amendment to "House Bill No. 99:

"In Section 17, line 5, after the word 'railroad,'

"strike out the following, 'And along the line of any "road or highway within the State to be used in the "operation of its railroad and also;'

"Was on motion of Mr. Gaskins concurred in by "the House of Representatives, and House Bill No. "99 was ordered to be enrolled as amended."

On page 728, appears:

"Senate Chamber,
"Tallahassee, Fla., May 19, 1893.

"Hon. J. B. Johnston,
"Speaker of the House of Representatives:

"Sir: I am directed by the Senate to inform the "House of Representatives that the Senate respect- "fully requests the return by the House at their "earliest convenience, of

"House Bill No. 99:

"A bill to be entitled an act to incorporate the "*Atlantic and Gulf Railroad Company;*

"The said bill having been transmitted to the "House by mistake.

"Very respectfully,
"C. A. Finley,
"Secretary of the Senate.

"Which was read and on motion of Mr. Gaskins, "the Chief Clerk was requested to return to the "Senate House Bill No. 99, and the bill was re- "turned."

On page 737 and page 738, appears:

"Under a suspension of the rules, the following "Senate message,

"Was read:

"Senate Chamber,
"Tallahassee, Fla., May 19, 1893.

"Hon. J. B. Johnston,
"Speaker of the House of Representatives:

"Sir: I am directed by the Senate to inform

"the House of Representatives that the Senate has "passed—

"House Bill No. 99:

"To be entitled an act to incorporate the Atlantic, "Suwannee River and Gulf Railroad Company;

"Amended by the Senate as follows:

"In Section 17, line 5, after the word 'railroad,' "strike out the following 'and along the line of any "road or highways within the State, to be used in "the operation of its railroad;

"Also,

"And respectfully requests the concurrence of "the House of Representatives therein.

"Very respectfully,

"C. A. Finley,

"Secretary of the Senate.

"Mr. Gaskins moved that Senate amendments to "House Bill No. 99 be concurred in;

"Which was agreed to and the bill ordered to be "enrolled as amended and was delivered to the Chief "Clerk of the Committee on Enrolled Bills."

On page 746, appears:

"House of Representatives,

"Tallahassee, Fla., May 19, 1893.

"Hon. J. B. Johnston,

"Speaker of the House of Representatives:

"Sir: Your Committee on Enrolled Bills, to "whom was referred—

"House Bill No. 99:

"To be entitled an act to incorporate the Atlantic, "Suwannee River and Gulf Railroad Company;

"Beg leave to report it properly engrossed.

"Very respectfully,

"J. L. Gaskins,

"Chairman of Committee.

* * * * *

"Which was read and Enrolled Acts were referred

"and delivered to the Joint Committee on Enrolled "Bills."

On pages 760 and 761 appears:

"Mr. Rourke, chairman of the Joint Committee on "Enrolled Bills, made the following report:

"House of Representatives,

"Tallahassee, Fla., May 20, 1893.

"Hon. J. B. Johnston,

"Speaker of the House of Representatives:

"Sir: Your Joint Committee on Enrolled Bills—

"Beg leave to report that they have examined the "following acts:

"An act to incorporate the Atlantic and Suwannee "River and Gulf Railway Company, to grant said "corporation certain privileges and to aid the con- "struction thereof;

* * * * *

"And find them correctly enrolled.

"Very respectfully,

"John Rourke,

"Chairman of Committee.

"Which was read and the enrolled bills as speci- "fied therein, were signed by the Hon. John B. "Johnston, Speaker, and Wm. Forsyth Bynum, "Chief Clerk of the House of Representatives, and "delivered to the Joint Committee on Enrolled "Bills."

On page 784 appears:

"House of Representatives,

"Tallahassee, Fla., May 22, 1893.

"Hon. J. B. Johnston,

"Speaker of the House of Representatives:

"Sir: Your Joint Committee on Enrolled Bills "beg leave to report that they have delivered the "following acts to the Governor:

* * * * *

"Also,

"An act to incorporate the Atlantic, Suwannee "River and Gulf Railway Company, to grant said "corporation certain privileges, and to aid the con- "struction thereof;

* * * * *

"Very respectfully,

"John Rourke,

"Chairman of Committee.

"Which was read and ordered spread upon the Journal."

On page 999 appears:

"The Speaker announced the reception of the fol- "lowing communication from His Excellency, the "Governor:

"State of Florida,

"Executive Department,

"Tallahassee, May 26, 1893.

"Hon. J. B. Johnston,

"Speaker of the House of Representatives:

"Sir: I have the honor to inform you that I have "signed the following:

* * * * *

"An act to incorporate the Atlantic, Suwanee "River and Gulf Railway Company, to grant said "corporation certain priviliges and to aid the con- "struction thereof;

* * * * *

"And I have filed the same with the Secretary of "State.

"Very respectfully,

"Henry L. Mitchell,

"Governor.

"Which was read and ordered to be spread upon "the Journal."

ENTRIES ON SENATE JOURNAL.

On pages 365 and 366 appears:

"The following message was also read:

"House of Representatives,

"Tallahassee, Fla., April 29, 1893.

"Hon. W. H. Reynolds,

"President of the Senate:

"Sir: I am directed by the House of Representa-"tives to inform the Senate that the House of "Representatives has passed—

"House Bill No. 99:

"To be entitled an act to incorporate the Atlantic, "Suwannee River and Gulf Railroad Company,

"And respectfully request the concurrence of the "Senate thereto.

"Very respectfully,

"Wm. Forsyth Bynum,

"Chief Clerk House of Representatives.

"Mr. McKinney moved that the rule be waived "and that House Bill No. 99 be read the first time by "its title;

"Which was agreed to by a two-thirds vote,

"Whereupon the bill was read the first time by "its title and referred to the Committee on Rail-"roads."

On page 520 appears:

"Mr. McKinne, Chairman of Committee on Rail-"roads, submitted the following report:

"Senate Chambers,

"Tallahassee, Fla., May 10, 1893.

"Hon. W. H. Reynolds,

"President of the Senate:

"Sir: Your Committee on Railroads, to whom "was referred—

"House Bill No. 99:

"A bill to be entitled an act to incorporate the "Atlantic, Suwannee River and Gulf Railroad "Company.

"Beg leave to report that they have had the same "under consideration, and recommend that it do "pass with the following amendments, to-wit:

"In Section 17, line 5, after the word 'railroad,' "strike out the following:

"And along the line of any road or highway within "the State, to be used in the operation of its rail- "road and also."

"Very respectfully,

"J. H. McKinne,

"Chairman of Committee on Railroads.

"The accompanying bill was placed among the "orders of the day."

On page 599 appears:

"Called up by Mr. McKinney:

"House Bill No. 99:

"A bill to be entitled an act to incorporate the "*Atlantic, Suwannee and Gulf Railroad Company.*

"Was read the second time in full, together with "the amendment offered by the Committee on Rail- "roads;

"Which was as follows:

"In Section 17, line 5, after the word 'railroad,' "strike out the following:

"And along the line of any road or highway within "the State, to be used in the operation of its rail- "road and also."

"Mr. McKinney moved that the amendments of "the committee be adopted:

"Which was agreed to, and the amendments to the "bill were declared adopted, and the bill with the "amendments was ordered engrossed and passed "to the calendar of bills on third reading in its "order."

On pages 619 and 620 appears:

"Mr. Wolfe, Chairman of Committee on En-
"grossed Bills, submitted the following report:

"Senate Chamber,
"Tallahassee, Fla., May 15, 1893.

"Hon. W. H. Reynolds,
"President of the Senate:

"Sir: Your Committee on Engrossed Bills, to
"whom was referred—

"Senate Amendments to

"House Bill No. 99:

"Entitled an act to incorporate the Atlantic,
"Suwannee River and Gulf Railroad Company.

* * * * *

"Beg leave to report that we have carefully ex-
"amined the same and find them correctly engrossed.

"Very respectfully
"J. Emmet Wolfe,
"Chairman Committee.

"The bills accompanying the report were placed
"among the orders of the day."

On page 701 appears:

"The Secretary called the attention of the presi-
"dent and Senate to the fact that

"House Bill No. 99:

"To be entitled an act to incorporate the *Atlantic,*
"*Suwannee and Gulf Railroad Company,*

"Was transmitted to the House by mistake and
"asked that the Senate take action on the matter.

"Whereupon, Mr. Wolfe moved that the Senate
"request the House of Representatives to return
"said bill;

"Which was agreed to, and the Secretary was
"ordered to request the House to return the said
"bill."

On pages 707 and 708 appears:

"Also the following message was read:

"House of Representatives,

"Tallahassee, Fla., May 19, 1893.

"Hon. W. H. Reynolds,

"President of the Senate:

"Sir: I am directed by the House of Representa-
"tives to inform the Senate that the House of Repre-
"sentatives would respectfully return herewith—

"House Bill No. 99:

"To be entitled an act to incorporate the Atlantic,
"Suwannee River and Gulf Railroad Company,

"To the Senate by request.

"Very respectfully,

"Wm. Forsyth Bynum,

"Chief Clerk House of Representatives.

"Mr. McKinney moved that the rules be further
"waived, and that House Bill No. 99 be read the third
"time by its title, and put upon its passage:

"Which was agreed to by a two-thirds vote and
"the bill was read the third time and put upon its
"passage.

"Upon its passage the vote was:

"Yeas—Messrs. Baya, Blitch, Borden, Bristol,
"Browne, Farmer, Fleming, Genovar, Johnson,
"Marks, McKay, McKinne, McKinney, Morrow,
"Rosborough, Smith, Thomas, Wadsworth, Whid-
"den, Williamson and Wolfe—21.

"Nays—None.

"So the bill passed, title as stated.

"Mr. McKinney moved that the rules be further
"waived, and that the bill be immediately certified
"to the House of Representatives;

"Which was agreed to by a two-thirds vote, and
"so ordered."

On pages 769 and 770 appears:

"Mr. Genovar, Chairman of the Joint Committee "on Enrolled Bills, submitted the following report:

"Senate Chamber,
"Tallahassee, Fla., May 22, 1893.

"Hon. W. H. Reynolds,
"President of the Senate:

"Sir: Your Joint Committee on Enrolled Bills, "to whom was referred—

* * * * *

"An act to incorporate the Atlantic, Suwannee "River and Gulf Railway Company, to grant said "corporation certain privileges, and to aid the con- "struction thereof.

* * * * *

"And beg leave to report that they have examined "the same, and submitted them for signature.

"Very respectfully,
"F. B. Genovar,
"Chairman of Joint Committee on Enrolled Bills."

On pages 789 and 790 appears:

"Mr. Genovar, Chairman of Joint Committee on "Enrolled Bills, submitted the following report:

"Senate Chamber,
"Tallahasee, Fla., May 22, 1893.

"Hon. W. H. Reynolds,
"President of the Senate:

"Sir: Your Joint Committee on Enrolled Bills, "to whom was referred—

* * * * *

"Also

"An act to incorporate the Atlantic, Suwannee "River and Gulf Railway Company and to grant "said corporation certain privileges and to aid the "construction thereof.

* * * * *

"Beg leave to report that they have delivered the "above named acts to the Governor.

"Very respectfully,

"F. B. Genovar,

"Chairman of Joint Committee on Enrolled Bills."

On page 795 appears:

"ENROLLED BILLS."

"The President gave notice that he was about to "sign:

"An Act to incorporate the Atlantic, Suwanee "River and Gulf Railway Company, to grant said "corporation certain privileges, and to aid the con- "struction thereof.

"The act was thereupon duly signed by the Presi- "dent and Secretary of the Senate, and ordered re- "turned to the chairman of the Joint Committee on "Enrolled Bills to convey to the Governor for his "approval."

On page 408 of published laws of Regular Session of 1893:

"SENATE JOINT RESOLUTION Relative to In- "dexing Errors in Journal."

"Whereas, Under a resolution adopted by the "Senate several weeks ago, directing the Secretary "of the Senate to prepare and revise daily a calendar "of bills on their respective readings, providing for "compensation without mentioning amount; and

"Whereas, It is the sense of this body that all "errors found in the pamphlet journal should be in- "dexed and appended to said pamphlet journal; "therefore.

"*Be it resolved:*

"That the Secretary of the Senate is hereby in- "structed to index and append such errors to the

"pamphlet journal, and that he be and is hereby "allowed for the work, together with the work of pre- "paring and revising the daily calendar of the "Senate, the sum of one hundred dollars, and that "the Sergeant-at-Arms is hereby instructed to enter "the same on the pay roll of the Senate.

"Approved June 3, 1893."

We might remark that the journal shows that this resolution was passed on the last day of the session (Page 1181); and we might properly further remark that neither journal has any index whatsoever of errata or otherwise.

"Section 21 of Article IV, of the Constitution, is as follows:

"Section 21. The Secretary of state shall keep "the records of official acts of the legislative and "executive departments of the government, and shall, "when required, lay the same, and all matters "relative thereto, before either branch of the legis- "lature; and shall be the custodian of the great seal "of the State. He shall also have charge of the "capitol building and grounds, and perform such "other duties as shall be prescribed by law."

The following are sections 75 and 78 of the Revised Statutes of Florida, being Sections 76 and 79 of the present General Statutes of the State:

"75. Seal.—The great seal of this State shall also "be the seal of the office of the Secretary of State, "and the Secretary of State may certify under said "seal, copies of any statute, law, resolution, record, "paper, letter or document, by law placed in his "custody, keeping and care, and such certified copy "shall have the same force and effect as evidence, as "the original would have."

"78. Acts and papers of the Legislature to be de-
"posited with the Secretary of State.—All original
"acts and resolutions passed by the Legislature, and
"all other original papers acted upon thereby, shall,
"immediately upon the adjournment thereof, be de-
"posited with and preserved in the office of the
"Secretary of State, by whom they shall be properly
"arranged, classified and filed."

Sections 430 and 431 of the Revised Statutes of Florida, now being numbers 618 and 619 of the General Statutes, are as follows:

"430. Details of construction of railroads.—No
"railroad company shall have any aid, benefit, land
"or property, of or from said Internal Improvement
"Fund unless its details of construction be recom-
"mended by a competent engineer and approved by
"the Trustees of the Internal Improvement Fund."

"431. Trustees may designate engineer for cer-
"tain purposes.—The Trustees of the Internal Im-
"provement Fund may designate any competent
"civil engineer to examine any railroad or canal or
"any portion thereof on account of which lands shall
"be claimed of said fund and to report whether the
"the same is properly completed, and to perform
"such other duties as said trustees in the administra-
"tion of said fund may require."

In conclusion we ask:

ARE THE DECISIONS OF THE SUPREME COURT OF FLORIDA BINDING UPON THIS COURT IN THE PRESENT INSTANCE, AS AFFECTS THE PLAINTIFF'S RIGHTS?

The act incorporating the Atlantic, Suwannee River and Gulf Railway and granting to it lands, was passed and approved May 24, 1893. The contract rights there-

under sought to be enforced in this suit were entered into, accrued and became vested between the said Railway Company and the Trustees of the Internal Improvement Fund during the year 1894. The contract between said Railway Company and The Atlantic Lumber Company, (the plaintiff's predecessor in title) as affects the lands in suit, was entered into, accrued and became vested during the year 1894. It was not until September 26, 1895, that the decision in the case of the State ex rel vs. Greene, 36 Fla., 154, was rendered. This is the first decision which undertook, in the State of Florida, to declare a statute unconstitutional because of variance in title of act as passed and as signed by the presiding officers of the two legislative houses and approved by the Governor. Even this part of the decision appears to be *obiter dicta*.

We understand the rule to be that this Court will respect the decisions of State courts, but will not give them a *retroactive effect*, and allow them to render invalid contracts which, in the judgment of this court, were lawfully made.

Groves vs. Slaughter, 40 U. S., 15 Pet. 449.
Ohio L. Ins. & T. Co. vs. Debolt, 57 U. S., 16 How., 416.
Gelpcke vs. Dubuque, 68 U. S., 1 Wall., 175.
State vs. Wapello County, 13 Iowa, 388.
Douglass vs. Pike County, 101 U. S., 677.
Cass County vs. Johnston, 95 U. S., 360.

This Court will not follow decisions of a State if thereby contracts which have accrued under earlier rulings will be injuriously affected.

Fairfield vs. Gallatin County, 100 U. S., 47.
Boyd vs. Alabama, 94 U. S., 645.
Thompson vs. Perrine, 103 U. S., 806.
Taylor vs. Ypsilanti, 105 U. S., 60.

There is a well settled exception to the rule which requires this Court to follow the decisions of the State courts. It is this: Where contracts have been entered into on the basis of a certain construction of the law of the State, justly supposed settled, whether from judicial decisions or *action of the State authorities* or long usage, United States courts will hold them valid, notwithstanding the decisions by the courts of the State made *subsequent* to the making of the contracts, settling the law of the State to the contrary.

McKeen vs. DeLancy's Lessee, 5 Cranch. 22.
Gardner vs. Collins, 2 Pet., 85.
Patterson vs. Jenks, 2 Pet., 230.
Sedgwick on Statutory and Constitutional Law, p. 290.

This Court has refused to follow the decisions of the Supreme Court of a State upon construction of the validity of a statute of the State where there was no contrary decision inconsistent therewith, basing this refusal upon a general construction of the statute by the *State authorities* and by the people, on the faith of which contracts, whose validity they were to determine, had been entered into.

Rowan vs. Runnels, 5 How., 134.
Groves vs. Slaughter, 15 Pet., 449.
Truly vs. Wanzer, 5 How., 141.
Simms vs. Hundley, 6 How., 1.
Pease vs. Peck, 18 How., 595.
Havemeyer vs. Iowa County, 3 Wall., 294.
Butz vs. City of Muscatine, 8 Wall., 575.
Pine Grove Township vs. Talcott, 19 Wall., 678.

In this last case this Court, speaking through Mr. Justice Swayne, says:

"The National Constitution forbids the State to pass laws impairing the obligation of contracts. In cases properly brought before us that end can be accomplished unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

See also:

Pleasant Township vs. Aetna Life Ins. Co., 138 U. S., 67.

Louisville Trust Co. vs. City of Cincinnati, 76 Fed. Rep., 296.

In Rowan vs. Runnels, supra, Chief Justice Taney, speaking for the Court, on page 139, says:

"Undoubtedly this Court will always feel itself bound to respect the decisions of the State courts, and, from the time they are made, regard them as conclusive in all cases upon the construction of their own laws; but we ought not to give them a retroactive effect and allow them to render invalid contracts entered into with citizens of other states, which, in the judgment of this Court, were lawfully made."

Afterwards, in Ohio Ins. & Tr. Co. vs. Debolt, 16 How., 416, the same learned Justice, after reiterating what he had before said in Rowan vs. Runnels, used this language:

"It is true the language of the Court in that case is confined to contracts with citizens of other States, be-

cause it was a case of that description which was then before it. But the principle applies with equal force to all contracts which come within its jurisdiction."

The above quotation is taken from the language of Chief Justice Wait in delivering the opinion in the case of Douglas vs. Pike County, 101 U. S., 677.

This decision is also deemed an authority in point.

If this court will follow, contrary to its own opinion, the construction given to a state statute by usage, for the sake of saving vested rights, the same laudable motive should lead it to refuse to follow a state court in a decision which is erroneous in principle and destroys vested rights.

THOMAS F. McGARRY,
Solicitor for Appellant.

Supreme Court of the United States

OCTOBER TERM, [illegible]911

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK

No. 220.49

RICHARD G. PETERS,
Plaintiff and Appellant.
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL and B. E. McLIN, Trustees of the Internal Improvement Fund of the State of Florida, and NEILL G. WADE, and the SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from United States Circuit Court, Northern District of Florida.

BRIEF FOR THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND,
Appellees.

W. S. JENNINGS,
Solicitor for Appellees.

DREW, JACKSONVILLE 220845

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 220.

RICHARD G. PETERS,
Plaintiff and Appellant,
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL and B. E. MCLIN, Trustees of the Internal Improvement Fund of the State of Florida, and NEILL G. WADE, and THE SOUTHERN TIMBER & NAVAL STORES COMPANY,
Defendants and Appellees.

Appeal from United States Circuit Court, Northern District of Florida.

APPELLEES' BRIEF.

It is deemed proper, in presenting a statement of facts in the instant case, to make some reference to the allegations of a bill of complaint filed in the state courts of Florida, in the case of the Atlantic Lumber Company, the predecessor in interest of the present appellant, against N. G. Wade, one of the appellees in this case, which will serve to present and explain to the Court the similarity of the questions presented and involved in the instant case, and those formerly determined by the Supreme Court of the State of Florida, in the case of N. G. Wade, appellant, vs. The Atlantic Lumber Company.

The Atlantic Lumber Company, as assignee of the Atlantic, Suwannee River & Gulf Railway Company, on the 2nd day of February, 1904, filed its bill in the Circuit Court of the Third Judicial Circuit of the State of Florida, for Taylor County, for the recovery of a large body of lands situated in that county, and therein prayed to have the defendant Neill G. Wade decreed to hold the lands in trust for the Atlantic Lumber Company, and to require the said Wade to convey the legal title thereto, to the Atlantic Lumber Company.

The bill sets out the Act of Congress of September 28th, 1850, known as the Swamp Land Grant Act, and alleges that by virtue of said act, the title to said lands involved became vested in the State of Florida. That on the 6th of January, 1855, the Legislature of the State of Florida, in pursuance of the Act of September 28th, 1850, passed the Internal Improvement Fund Act, whereby the lands so given by the Federal Government to the State of Florida became vested in State officials and their successors in office as Trustees, and therein defined their rights, powers and duties. That on the 24th of May, 1893, the Legislature of Florida passed an act entitled "An Act to incorporate the Atlantic, Suwannee River & Gulf Railway Company, to grant to said corporation certain privileges, and to aid the construction thereof," Chapter 4267, Laws of Florida of 1893.

That the 9th section of said act of 1893 granted to the Atlantic, Suwannee River & Gulf Railway Company 10,000 acres of land to the mile for every mile of railroad that should be constructed by the said corporation, out of the lands granted to Florida under the act of Congress of September 28th, 1850. That Section 10 thereof pro-

vides for the issuance of certificates as to the completion of said railroad, authorizing and entitling said Railroad Company to locate the lands, requiring the Trustees of the Internal Improvement Fund to set apart said lands and make deeds therefor when so selected. That Section 18 of said act provides for a land grant of 10,000 acres per mile to said corporation, as successors of the Atlantic, Suwannee River & Gulf *Railroad* Company, and merges all of the property and corporate franchises of the former Company in the Atlantic, Suwannee River & Gulf *Railway* Company.

That said charter was accepted, its railroad completed, and certification thereof made in accordance with the Internal Improvement Fund Act. That on the 19th day of July, 1893, a plat of an actual survey and the details of construction were duly approved by the Trustees of the Internal Improvement Fund. That on the 9th day of December, 1893, certain certificates were issued to the Atlantic, Suwannee River & Gulf Railway Company, being Numbers 14,891-A, 14,891-B, 14,891-C, 14,-891-D, aggregating 50,000 acres of land. The certificate is recited in full, but is in blank, and shows no signature of any official of the State. That on the 15th of March, 1894, the State's engineer approved 15 miles of said road, and certificates were issued therefor, being certificates Nos. 14,891, E, F, G, H, I, J, K, L, M. That such certificates showed that the Atlantic, Suwannee River & Gulf Railway Company had fully complied with the conditions contained in said land grant, and that all things and all conditions required to vest the title in said Atlantic, Suwannee River & Gulf Railway Company, its successors and assigns, were done, and that said Company is entitled to 200,000 acres of the lands granted to the State of Florida by the Act of Congress approved September

about two million acres of swamp and overflowed lands, the title to which is vested in the Trustees of the Internal Improvement Fund, under the Act of Congress of September 28th, 1850.

That the lands involved herein are chiefly valuable for the timber growing and being thereon, and that the removal thereof would seriously and measurably decrease the value of the property.

That before the conveyance by the Trustees of the Internal Improvement Fund to Neill G. Wade, all legal and initiative steps and proceedings had been taken by complainant to properly and legally locate, select and segregate out of the general mass of swamp and overflowed lands, to entitle the complainant to priority thereto, as against any other person, firm or corporation, and to legally require a conveyance or deed thereof from the Trustees of the Internal Improvement Fund, in case a conveyance or deed thereof be in point of law required.

That after such legal steps and initiative steps and proceedings had been taken by the complainant, the equitable title and beneficial ownership to the lands became vested in the complainant as aforesaid.

That on the 3rd day of July, 1903, the Trustees of the Internal Improvement Fund made a conveyance of the lands to Neill G. Wade, the deed thereto being recorded in the county in which this suit was brought; that Wade is not a bona fide purchaser for value as against the rights of the complainant; that he took the title to the lands charged with knowledge of the rights and equities of the complainant; that before said deed was executed, delivered and accepted, this complainant became and was the rightful owner of said lands, by virtue of a solemn legislative grant by law, with notice of which the defendant Wade was and is fully charged.

That said Neill G. Wade holds whatever title he took by said deed, in fraud of, but in trust for this complainant. That prior to the execution and recording of said deed from the Trustees of the Internal Improvement Fund to Neill G. Wade, the complainant had taken actual possession, so far as the same could be taken possession of, wild uncultivated lands, placed on record in the county aforesaid a history of the facts within which its rights originated and ownership vested, and posted a portion of said lands, and was in the act of posting the balance thereof, when the agents of the complainant were driven from the premises, with threats of personal violence by the agents of the defendant. That said lands far exceed in value the amount paid therefor by the said Wade to the Trustees of the Internal Improvement Fund. That the Trustees still hold, and have not disposed of, the amount received from the said Wade for the said property. That it is the duty of the said Wade to execute, acknowledge and deliver, free and clear of all incumbrances, a deed to the said lands, and should proceed against the Trustees of the Internal Improvement Fund to recover the amount paid by him therefor.

The complainant prays that the said Neill G. Wade be decreed to hold the title for the benefit of the complainant; be required to make a deed to the complainant; be declared a trustee for complainant; for injunction and process.

PROCEEDINGS IN THE STATE COURTS.

To this bill, the defendant Neill G. Wade filed a demurrer, and on January 23rd, 1905, Hon. B. H. Palmer, the State circuit judge, overruled and denied said demurrer, and every ground therefor. From this order

overruling defendant's demurrer, the defendant appealed to the Supreme Court of the State of Florida, and assigned two assignments of error, viz:

(1) The honorable Circuit Judge erred in overruling and denying the several grounds of demurrer of the defendant filed to complainant's bill of complaint herein.

(2) The honorable Circuit Judge erred in making and rendering his order or decree, dated the 23rd day of January, 1905 (which was in formal language overruling the demurrer).

RESULT OF SUIT IN STATE COURT.

At the January Term, 1906, the Supreme Court of the State of Florida decided the case, and handed down a decision reversing the decree of the State Circuit Court, sustaining the demurrer to the bill of complaint, and ordering that the bill of complaint be dismissed.

This decision of the Florida Supreme Court is reported under the style of *Wade vs. Atlantic Lumber Company, 51 Florida Reports, page 628.*

A rehearing was had, at which counsel for the Atlantic Lumber Company presented a petition setting forth the same matters and contentions now being urged in the present suit. The petition was denied.

51 Florida Reports, page 638.

The present suit in the Federal courts is brought by *Richard G. Peters,* who alleges in his bill of complaint, that on or about the 1st day of September, 1906, and subsequent to the decision of the case by the Florida Supreme Court, the Atlantic Lumber Company made a deed of conveyance transferring to said Richard G. Peters the same lands involved in the suit in the State courts.

The case is *res adjudicata,* therefore, between the complainant and these defendants, so far as the State courts are concerned, and the present suit is an attempt to appeal from the State courts to the Federal courts.

PROCEEDINGS IN THE FEDERAL COURTS.
STATEMENT OF FACTS.

Richard G. Peters, of Manistee, Michigan, on the 27th day of April, 1907, filed his bill in the United States Circuit Court for the Fifth Judicial Circuit, in and for the Northern District of Florida, in equity, against Neill G. Wade, of Montbrook, Florida; the Trustees of the Internal Improvement Fund of the State of Florida; and the Southern Timber & Naval Stores Company, a corporation organized under the laws of Florida, for the recovery of a large body of lands in Taylor County, Florida, specifically described in the transcript of the record, and alleges among other things that questions arise herein, and are ruled, under the Constitution and laws of the United States.

That by the Act of Congress approved September 28th, 1850, the United States granted to the State of Florida all the swamp and overflowed land in said State for the purpose stated in said Act. That on January 6th, 1855, the Legislature of Florida having passed, the Governor of the State approved "An Act to Provide for and Encourage a Liberal System of Internal Improvements in this State," and for the purposes specified in said Act, vested in five Trustees, the Governor, Comptroller, State Treasurer, Attorney-General and Commissioner of Agriculture, and their successors in office the legal title of said swamp and overflowed lands, the State meanwhile owning the residuary interest and beneficial title to said lands.

That all of the lands hereinafter described were granted by the United States to said State, and have been duly patented under said Swamp Land Grant Act.

That on the 23rd day of February, 1893, an application was filed in the office of the Secretary of State of Florida for a charter for a corporation to be known as "The Atlantic, Suwannee River & Gulf Railroad Company," for the purpose of constructing a railroad, and that letters patent were duly issued thereon under date of March 31st, 1893; that said company accepted said charter, and proceeded to construct said line of railroad, partly finishing the first five-mile section thereof; that it was exercising its corporate functions and duties under said charter and constructing said railway, when it became merged in and duly conveyed its said rights and interests and completed railway to the corporation next hereinafter mentioned, with the approval of the Legislature of said State.

That on the 24th day of May, 1893, the Governor of the State of Florida approved an act theretofore duly passed by the Legislature of the State of Florida, entitled "An Act to incorporate the Atlantic, Suwannee River & Gulf Railroad, to grant to such corporation certain privileges, and to aid the construction thereof," with the knowledge that said corporation was to succeed to all the rights of the said Atlantic, Suwannee River & Gulf Railroad Company. That said act constituted certain named gentlemen and their successors a body corporate, and authorized said corporation, among other things to construct, maintain, operate and manage a railway beginning at or near the town of Starke, Florida, as in and by said act, namely, Chapter 4267 of the laws of Florida, passed at the regular session of 1893, found on pages 223 to 229 inclusive, will more fully appear.

That in and by the 9th section of said act of May 24th, 1893, it was provided as follows:

> "That the State of Florida, for the purpose of aiding the construction of said railroad, its branches and extensions, hereby grants unto said company ten thousand acres of land for each mile of road it may construct, of the lands granted to the State of Florida, under the Act of Congress of September 28, 1850, and which are commonly known as the swamp and overflowed lands; lands to be deeded to the company by the Trustees of the Internal Improvement Fund, as fast as each five miles of said road or any of its branches are graded, cross-tied and rails laid thereon."

That in and by the 10th section of said Act of May 24th, 1893, it was provided:

> "That upon the filing of a certificate of the completion of any five miles of said road or any of its branches, signed by the engineer and president of the said company, it shall be the duty of the Trustees of the Internal Improvement Fund, to require the State Engineer, or some other competent person, to examine and inspect each five miles of road so completed, and on such person's or the State Engineer's report that the five miles are completed as certified, it shall be the duty of the Trustees of the Internal Improvement Fund to issue deeds to the said corporation, as required in the foregoing section; Provided, that the said corporation, its successors and assigns, shall have the privilege of requiring and having from the Trustees of the Internal Improvement Fund, a certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to as aforesaid; and whenever and as often as the said corporation shall file with the Trustees of the Internal Improvement Fund a plat and survey of the lands located by

it in pursuance of a certificate given it by the Trustees as herein provided, the said Trustees shall set apart and upon demand execute unto said corporation, its successors or assigns, a deed conveying unto it the lands described in said plat and survey, from the swamp and overflowed lands granted to the State of Florida by the Act of Congress of September 28th, 1850."

That immediately after the enactment of the foregoing act, the incorporators accepted said charter.

ASSIGNED ITS RIGHTS.

The said Atlantic, Suwannee River & Gulf Railroad Company duly conveyed and transferred all of its rights, of every kind and nature, to the Atlantic, Suwannee River & Gulf Railway Company, the corporation organized under the Act of May 24th, 1893. That said last named Company became vested with all of the titles, rights, etc., of the said Atlantic, Suwannee River & Gulf Railroad Company. That between May 24th, 1893, and December 12th 1901, said Atlantic, Suwannee River & Gulf Railway Company completed its entire main line, and thereby became entitled to the encouragement and aid granted to it by the Act of May 24th, 1893, aggregating 10,000 acres of land for each mile of constructed road, of the lands granted to the State by the Act of Congress of September 28th, 1850. That on the 9th day of December, 1893, the Atlantic, Suwannee River & Gulf Railway Company appeared before said Trustees, and applied for a certificate under the provisions of Sections 9, 10 and 18 of the Act of May 24th, 1893, alleging that four certificates were issued for 12,500 each, and numbered 14,891 A. B. C and D, which certificate appears in said bill in blank and unsigned; and that later, on the 24th of March, 1894, the

Railway Company appeared before the Trustees, and applied for a certificate under the provisions of Sections 9 and 10 of the Act of May 24th, 1893, submitting proof that fifteen miles of said railway had been constructed, in addition to the five miles upon which certificates had formerly been issued, and for which certificates were issued in substantially the same form as those issued on December 9th, 1893, and numbered 14,891 E, F, G, H, I, J, K, L and M, for 150,000 acres of land.

That thereunder and thereby, the said Atlantic, Suwannee River & Gulf Railway Company, its successors and assigns, became entitled to 200,000 acres of land out of the lands granted to the State of Florida by the Act of Congress of September 28th, 1850, and the Acts of the Legislature and of the Trustees of the Internal Improvement Fund of the State of Florida.

That the Atlantic, Suwannee River & Gulf Railway Company entered into a contract with the Atlantic Lumber Company to furnish the money necessary to build and equip the road, and thereby became entitled to a majority of its stocks, bonds and lands, including the land grant aforesaid, and did assign and transfer the certificates above enumerated authorizing the location of the lands as aforesaid. That maps and plats showing the location of the lands set forth in said bill described in Exhibit A were filed in the office of the Commissioner of Agriculture of Florida. That during the month of July, 1902, the Trustees of the Internal Improvement Fund executed and delivered a certain deed or instrument in writing, purporting to convey the lands described in "Exhibit A" for the alleged consideration of $223,840.00 to Neill G. Wade, one of the defendants. That later, Wade and wife conveyed said lands to the Southern Timber & Naval Stores Company, a defendant.

That on or about the 1st day of September, 1906, the Atlantic Lumber Company, for a valuable consideration therein mentioned, made a deed of conveyance transferring to Richard G. Peters the lands described in Exhibit A.

That the Trustees of the Internal Improvement Fund refused to comply with the demands for deeds to said lands, and alleged that said Act of May 24th, 1893, is invalid; that it was never legally passed by the Legislature, and confers no rights upon your orator or his grantors. That the complainant charges the contrary to be the truth, and alleges that the Act of May 24th, 1893, is valid.

PRAYER OF THE BILL.

The complainant prays, among other things, for a decree adjudging that Richard G. Peters is the rightful owner of the lands therein described; that Neill G. Wade and the Southern Timber & Naval Stores Company hold the bare naked legal title in trust for the complainant; that the defendants Wade and the Southern Timber & Naval Stores Company be restrained from disposing of this property, and that they be declared trustees for Peters, and be compelled to execute and deliver deeds to the lands in question to the complainant. The bill further prays for specific performance as against the Trustees, for injunction and process.

To this bill, the Trustees of the Internal Improvement Fund of Florida, defendants, filed a demurrer, containing eighteen grounds of demurrer. The specific grounds of said demurrer will be referred to more particularly in the argument of this cause.

On January 11th, 1908, Hon. W. B. Shepard, Judge of the United States Circuit Court for the Northern District

of Florida, sustained the demurrer, allowing the complainant until the 3rd day of February, 1908, to amend, to which order exceptions were taken, and a further order was made dismissing the bill by Judge Shepard on February 4th, 1908.

APPEAL TO CIRCUIT COURT OF APPEALS.

Afterwards, counsel for Richard G. Peters filed a petition for an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, on July 6th, 1908, which petition was granted, the appeal was allowed, and in the said Circuit Court of Appeals, the same assignments of error were assigned that appear in this court, viz:

(1) That the Circuit Court erred in its order of January, 1908, sustaining the demurrer to the bill of complaint.

(2) That the court erred in dismissing said bill of complaint.

This appeal was heard by the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, in March, 1909, and on March 30th, 1909, that Court handed down the following decision:

> "On the suggestion of counsel for appellant, that the jurisdiction of the lower court is based entirely upon the impairment by the State of Florida of the contract under which complainant claims, and therefore this court has no jurisdiction of this appeal, and counsel for the appellees acquiescing in this view, the appeal herein is dismissed with costs."

After having been thus defeated in the State Supreme Court, the United States Circuit Court, and the Circuit Court of Appeals, the appellant on April 3rd, 1909, filed a petition in the Circuit Court for the present appeal from

the decree of the United States Circuit Court for the Northern District of Florida direct to this Court, which was allowed.

ASSIGNMENTS OF ERROR.

The following errors are assigned by appellant:

(1) The order of the court sustaining the demurrer to the bill of complaint filed in said cause.

(2) The decree of the court dismissing the said bill of complaint.

ARGUMENT AND CITATION OF AUTHORITIES.

The two assignments of error are practically one and the same, and in the presentation of the case will be so considered. In the effort to present the points of law that were raised in the lower court briefly, certain of the enumerated grounds of demurrer will be grouped for convenience.

FIRST, SECOND, THIRD, FOURTH AND FIFTH GROUNDS.

These grounds of the demurrer will be argued together, and are as follows:

1. That the complainant has not in and by his said bill made or stated such a case as entitles him, in a court of equity to any discovery from these defendants, or to any relief against them, as to the matters contained in said bill, or any of such matters.

2. That the said complainant has not by his said bill shown any sufficient matter of equity to entitle him to the relief sought in and by his said bill against these defendants.

3. That the said complainant's bill does not contain sufficient matter of equity whereupon this court can ground any decree in favor of said complainant, or give said complainant any relief against these defendants.

4. That the said complainant's bill does not state facts sufficient to constitute a cause of action against these defendants.

5. That it appears by the complainant's said bill, affirmatively, that there is no privity between said complainant and these defendants to enable said complainant to call on these defendants for a conveyance of the title to swamp and overflowed lands.

These specifications of the demurrer will be argued together.

The claim of the complainant herein is based upon the Act of May 24th, 1893, Chapter 4267, Laws of Florida. This question therefore involves the interpretation of the Act of May 24th, 1893 especially, and incidentally the Act of Congress approved September 28th, 1850, known as the Swamp and Overflowed Land Grant Act, and Chapter 610, Laws of Florida, granting all of the swamp and overflowed lands to five Trustees and their successors in office, and prescribing their powers and duties as Trustees, and in the management and disposition of the Internal Improvement Fund of the State of Florida, and the trusts therein expressly set forth. To entitle the complainant, therefore, to recover in this case, he must show a compliance, not only with the Act of incorporation of the Atlantic, Suwannee River & Gulf Railway Company, Chapter 4267, Laws of Florida, but also a compliance with all of the acts of the Legislature of the State of Florida in force and effect relating to the lands composing the Internal Improvement Fund of the State. The

complainant's case must stand or fall by the allegations of the bill. Every act essential to the complainant's title to maintain its bill, and to obtain the relief asked, must be stated in the bill, otherwise the defense will be fatal.

Anderson vs. Northrup, 30 Fla., 612.

I submit that the complainant does not submit sufficient allegations to justify the conclusion that at the time of the conveyance by the Trustees of the Internal Improvement Fund to Wade, the complainant was entitled to a deed to the property involved. The theory upon which the complainant predicates this suit against the Trustees of the Internal Improvement Fund, is that the Trustees have made to Wade a deed conveying the property to which complainant was entitled to have a conveyance made to him by said grantors, the Trustees, at the time and date of the execution of the deeds to Wade. To entitle complainant to such conveyance, it would have to appear affirmatively upon the face of the pleadings, that on the 3rd of July, 1903, Richard G. Peters was entitled to the legal title to the property involved.

Rector vs. Gibbs, 111 U. S., 276.
Lee vs. Johnson, 116 U. S., 48.
Guinby vs. Conlan, 104 U. S., 420.
Johnson vs. Towsley, 13 Wall., 72.
Porter vs. Bishop, 25 Fla., 750.
Cheeser vs. DePrater, 20 Fla., 691.

We think it requires no argument to see the fallacy of such a position, in view of the fact, as alleged in the complainant's bill, that R. G. Peters did not become entitled to even the claim he asserts he obtained by assignment, until the date of the assignment, September 1st, 1906 (Rec. p. 22). In the case at bar, there is no relation of trustee and cestui que trust. The facts as disclosed by

the bill are that the complainant-appellant made some effort to locate the lands, as alleged in the bill by virtue of certain certificates supposed to have been issued to the Atlantic, Suwannee River & Gulf Railway Company. The form of the certificate is set forth in the bill in hac verba, in blank; that is to say, without the signature of either of the members of the Trustees of the Internal Improvement Fund. By whom said certificates were signed, if signed, is not disclosed by the complainant's bill. The Act in question, as appears from its provisions, requires that these certificates should be signed by the Trustees of the Internal Improvement Fund who are named in the act of January 6th, 1855. The complainant nowhere declares that these several officers signed these certificates. It appears upon the face of the bill, that the members of the Trustees of the Internal Improvement Fund declined to allow these certificates to be entered upon, and these lands to be located thereby upon the part of the Railway Company, or upon the part of the complainant. The records of the Internal Improvement Fund controvert the right of the complainant or his predecessors in claim or title to obtain these lands. Therefore, long before Wade purchased these lands, the Trustees had declared by their solemn act the invalidity of the pretended certificates, which at most only pretended to authorize the holders thereof to locate the lands, and nowhere referred to conveying said lands, or any interest therein. That the complainant was not entitled to a deed. It does not appear in the complainant's bill that the Trustees committed any error of law or of fact. The complainant simply declares that before Wade purchased, he had done everything and had acquired a right to the lands involved. This is mere argument. Before a complainant can recover in this State, he must

show that the Trustees of the Internal Improvement Fund, in the exercise of their discretion, committed such an error of law, as that by such misconstruction of the law, the Trustees have withheld from the complainant his rights. Otherwise, it is the duty of this court to uphold the action of the Trustees, the presumption being that they discharged their duty and conformed to the statute regulating the rights, duties and powers of the Trustees of the Internal Improvement Fund.

Quinby vs. Conlan, 104 U. S., 420.
Porter vs. Bishop, 25 Fla., 750.
Cheeser vs. DePrater, 20 Fla., 691.

II.

6TH TO 16TH GROUNDS OF DEMURRER.

The 6th to 16th grounds of demurrer, inclusive, relate to the same questions and points, and will be argued together. These grounds of demurrer are as follows:

6. That the Act of the Legislature set forth in the complainant's bill is void and ineffectual, so far as it relates to the swamp and overflowed lands, in that it does not provide for their drainage and reclamation.

7. That the said Act set forth in the complainant's said bill is void, and ineffectual so far as it relates to swamp and overflowed lands, because at the time mentioned in said bill, and ever since, until the date of the conveyance by these defendants of the lands referred to in said complainant's bill to Neill G. Wade, as appears by the complainant's bill, the title to said lands was and had been in the Trustees, defendants, charged with duties in reference to said lands, and such title was not then, at the date of said Act, in the State of Florida.

8. That said Act referred to in complainant's said bill purports to grant lands for a railroad shown by said Act to have been at that time in part already constructed and equipped and in operation.

9. That the Act referred to in complainant's bill is subject to the rights of creditors of the Trustees and to the trusts contained in Chapter 610, Laws of Florida, the main one being—the Drainage and Reclamation of the Swamp and Overflowed Lands Within the State of Florida, to the Control, Management, Sale and Application of the Lands of the Internal Improvement Fund of the State of Florida, as aforesaid, by the Trustees, Defendants.

10. That the said Act of the Legislature referred to in complainant's bill was and is effectual as against these Trustees, defendants, because it was and is subject to the provisions of Section 440 of the Revised Statutes and Section 628 of the General Statutes of Florida, which reads as follows:

"Grants Subject to Trusts: Any and all grants of land other than the alternate sections within the usual six-mile limit made or that may be made by any act, shall be subject to the rights of all creditors of the Internal Improvement Fund, and to the trusts to which said Fund is applicable and subject under the Act approved January 6th, 1855, and entitled, 'An Act to Provide for and Encourage a Liberal System of Internal Improvements in this State,' and subject to control, management, and sale and application of said fund and the lands constituting the same, by the Trustees of the Internal Improvement Fund, for the purposes of said trust under said Act."

11. That the Legislature of 1893 of the State of Florida, had no power or authority to direct the Trustees to make deeds purporting to convey the title to the swamp and overflowed lands in said trust.

12. That the complainant's bill fails to show that the Trustees of the Internal Improvement Fund joined in the issuance of the alleged certificates referred to in complainant's bill, or that the Trustees had any authority to issue the alleged certificates referred to in complainant's said bill; or any authority to declare that they would make deeds to lands belonging to the Internal Improvement Fund aforesaid; or that they had any authority to bind their successors in office to carry out any such alleged certificates.

13. That the Act of the Legislature, approved May 24, 1893, entitled, "An Act to Incorporate the Atlantic & Suwannee River & Gulf Railway," is inoperative, it being the Act under which complainant claims title to certain lands referred to in the bill of complaint, which Act does not and could not confer upon the complainant any vested rights, or contractual interests in the lands described in complainant's bill in pursuance thereof.

14. That if any right became vested in complainant aforesaid by said Act, they were subject and subordinate to the control, management, sale and appropriation of the Internal Improvement Fund and the lands constituting the same by the Trustees of the Internal Improvement Fund as expressly provided for by Section 440 of the Revised Statutes of the State of Florida herein referred to.

15. That said bill does not allege that the trusts to which the Internal Improvement Fund of the State of

Florida, is applicable, the main trust being the drainage and reclamation of the swamp and overflowed lands of the State of Florida, have been fully performed and discharged, and that all the creditors of the said fund have been satisfied and paid in full.

16. That long prior to the filing of the complainant's said bill the Trustees, defendants, sold the lands described in Exhibit "A" subjoined to complainant's said bill, to Neill G. Wade for a good and valuable consideration, namely the full value of said lands, by good and sufficient deed of conveyance duly executed and delivered, under which said Neill G. Wade took posession. All of said matters and things the complainant was fully advised as appears by the allegations of his said bill of complaint.

SWAMP LAND GRANT ACT.

The Act of Congress approved September 28th, 1850, provides, among other things, that "To enable the State of Arkansas (the Act having been extended to Florida and other States) to construct the necessary levees and drains to reclaim the swamp and overflowed lands, the whole of the swamp and overflowed lands made unfit thereby for cultivation which shall remain unsold at the passage of this Act, shall be and the same are hereby granted to said State." (Sec. 1) "That a patent shall issue as herein provided, and upon the issuance of the patent, the fee simple to said lands shall vest in said State, subject to the disposal of the Legislature thereof; provided, however, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, so far as necessary, to the

purpose of reclaiming said lands by means of levees and drains aforesaid." (Sec. 2).

The said Act of Congress is printed at length in the appendix to this brief, and made a part hereof.

The complainant's bill does not allege that the Act of the Legislature, Chapter 4267, relates to or provides for drainage and reclamation.

INTERNAL IMPROVEMENT FUND.

Following the provisions of said Act of Congress granting the swamp and overflowed lands to Florida for the purpose of drainage and reclamation, and subject to the disposal of the Legislature thereof, an Act was passed and approved by the Governor, as referred to in the complainant's bill, entitled "An Act to provide for and encourage a liberal system of internal improvement in this State (Florida)."

The preamble to said Act refers to the provisions of the State Constitution, declaring for a liberal system of internal improvements.

The first section grants the unappropriated lands granted by Congress to the State under the two separate acts, one approved March 3rd, 1845 (1841), and the Swamp and Overflowed Land Grant Act, approved September 28th, 1850, together with all the proceeds that have accrued or may hereafter accrue to the State from the sale of said lands, which are hereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this Act. (Sec. 1.)

Section 2 provides, among other things, that for the purpose of assuring the proper application of said fund

for the purposes herein declared, said lands and all of the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five Trustees, to-wit: the Governor of the State, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General and the Register of State Lands (now the Commissioner of Agriculture), and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with power to sell and transfer said lands to purchasers, and receive payment for the same, and invest the surplus moneys arising therefrom from time to time. (Sec. 2.)

And in the 16th Section of said Act is found this language: "That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the public lands included in the trust, having due regard for their location, value for agricultural purposes and on account of timber or naval stores, and make such arrangements for the drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land, and said Trustees shall encourage the actual settlement and cultivation of said lands, by allowing preemptions under such rules and regulations as they may deem advisable.

The title, preamble, Sections 1, 2, and 16 of said Chapter 610, Laws of Florida, approved January 6th, 1855, are printed at length in the appendix to this brief.

Thus it will be observed from these laws, that the title to the lands described in the complainant's bill, and as appears by the allegations of the complainant's bill, were granted to the State of Florida for the specific and

express purpose of drainage and reclamation. That in line therewith, and in accordance with the provisions of the law making the lands so patented subject to the disposal of the Legislature, that said lands were disposed of by the provisions of the Act of the Legislature approved January 6th, 1855, when, in the language of said Act, the lands were "*irrevocably vested* in the Trustees aforesaid, for the express purpose, and to enable them to make such arrangements for the drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund."

TRUSTEES AUTHORIZED TO MAKE SALES.

The law creating the Trustees of the Internal Improvement Fund, and vesting in them and their successors in office irrevocably the lands so granted, expressly provides that the Trustees shall hold the same in trust for the uses and purposes set forth in said Act, with the power to sell and transfer said lands to purchasers, and receive payment for the same. (Sec. 2). Therefore, we submit that the title to the lands described in the complainant's bill was vested in the Trustees of the Internal Improvement Fund in 1855, and therefore neither the Legislature of 1893, nor the State of Florida, as represented by the Legislature, had the title to said lands to grant, but on the contrary, only possessed, as appears by the allegations of complainant's bill, the residuary or beneficial interest therein. That the Trustees being vested with the title, it having been made a part of their duty, clearly within their powers to fix the price, sell the lands as provided for by statute, that having made a sale of the lands involved in this suit in good faith to Neill G. Wade, for not only a valuable consideration, but for what was con-

sidered the full value of the lands, long prior to the claims of the complainant or even his predecessor in title, vested a valid and indefeasible title in the grantee; and therefore the complainant's bill is ineffectual as against these Trustees defendants, for the title to the lands described in said bill. That the residuary interest and beneficial title to said lands (Rec., p. 4), being all that remains in the State for subsequent disposition by the Legislature, was not a title that enables the State through its Legislature to make *absolute* grants of land, or grants absolute of any specific land or interest therein, but only such a residuary interest or beneficial interest as the State might have in the remnant or what was left of the lands vested irrevocably in the Trustees of the Internal Improvement Fund for the express trusts and purposes, among them being drainage and reclamation, which trusts have not been performed, and which duties are now and for some years have been actively performed by the Trustees, under the discretionary power to fix the price and sell lands and receive payment therefor, and to make such arrangements as in their judgment is deemed best to accomplish the purposes of drainage and reclamation, which result could not have been anticipated in 1893 sufficiently to have warranted the Legislature in making a grant of lands to a railroad company to aid in its construction, even though it had been warranted in Law in such diversion of the Fund.

It may be of interest in this connection to make some reference to the creation, purpose and management of the Internal Improvement Fund of the State of Florida, the powers and duties of the Trustees thereunder, the powers and limitations of powers of subsequent Legislatures over the Fund, or control the judgment, discretion

and management of the Internal Improvement Fund by the Trustees and their successors in office.

ORIGIN.

Prior to the admission of this State into the Union, the topography of the State had been carefully examined and considered by eminent and skilled men, who did more to establish a system of topography descriptive of the various characters of the lands along scientific principles and greater accuracy than has been accomplished by any other man or men since their day. Such information no doubt led to the adoption of the resolutions on the subject of drainage and reclamation of the Everglades by the Legislature of 1846, which resolution reads as follows:

"DRAINAGE AND RECLAMATION.

Resolution in Relation to Draining the Everglades.

(No. 14.)

"WHEREAS, Large tracts of the public lands lying in the vicinity of Lake Okeechobee, and in that region south of said Lake called 'The Everglades,' being covered with water, are incapable of being surveyed and sub-divided, and are therefore valueless to the United States; and

WHEREAS, It is believed that a large portion of said lands may be drained by canals, reclaimed and made valuable for the cultivation of tropical plants and fruits; and,

WHEREAS, It is believed that these lands if reclaimed would not only remunerate this State for the expense of such reclamations but, would yield a considerable surplus above such expense; therefore,

Resolved, By the Senate and House of Representatives of the State of Florida in General Assembly

convened, that Congress be requested to grant to this State all of the said lands lying south of the Caloosahatchee River and of the northern shore of Lake Okeechobee, and between the Gulf of Mexico and the Atlantic Ocean, on condition that the State will drain them and apply the proceeds of the sale thereof, after defraying the expense of drainage to purposes of education."

Approved January 6th, 1848.

Closely following the adoption of this resolution by the legislature of Florida requesting the granting of lands mentioned therein and on the condition that the State drain them and apply the proceeds from the sale thereof after draining to education as therein set forth, the Congress of the United States enacted Chapter 34 entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," which act was approved September 28, 1850. Under which Act, the whole of the swamp and overflowed lands made unfit thereby for cultivation were granted to the State of Florida to enable it to construct the necessary levees and drains to reclaim swamp and overflowed lands therein, and said act provided that a patent should issue to the State, and on that patent a fee simple to the lands should vest in the said State subject to the disposal of the legislature thereof, and it was in said act provided that the proceeds from said lands whether from sale or direct appropriation in kind should be applied exclusively as far as necessary to the purpose of reclaiming said lands by means of levees and drains aforesaid. The condition upon which these lands were granted to the State of Florida was that it would so dispose of the land by sale or otherwise as to drain and reclaim it.

The State of Florida accepted this grant in 1851, with the conditions expressed therein and for the purposes therein set forth, under date of January 24, 1851, as Chapter 332, in which act is found the creation of this Board of Internal Improvement for the State of Florida, consisting of the Governor, Attorney-General, Treasurer, Comptroller and Register of Public Lands, and one member from each judicial district of the State to be elected by the General Assembly to serve two years, and required the Treasurer to keep a separate account of all moneys received for swamp lands to be laid before the General Assembly at their regular session.

On January 7, 1853, the legislature enacted Chapter 481, providing for granting lands reclaimed by the grading and construction of the Florida, Atlantic and Gulf Railroad Company through the swamp and overflowed lands belonging to the State for a portion of said lands, and on January 8, Chapter 482, with similar provisions to the Florida Railroad Company, and on January 10, 1853, Chapter 496 repealing that portion of Chapter 432 that created a Board of Internal Improvement.

SECOND BOARD OF INTERNAL IMPROVEMENT.

Also created a Board of Internal Improvement of the State of Florida to consist of the State Engineer as President, and eight commissioners to be elected by the General Assembly, two commissioners from each judicial district, to hold for four years.

REPORT OF BOARD.

The Board of Internal Improvement of the State of Florida filed a report December 22, 1854, House Journal, page 133.

Special attention of the court is invited to this report, which is deemed of importance, and is the basis of the law creating the Internal Improvement Fund.

BOARD OF INTERNAL IMPROVEMENT ABOLISHED—1855.

This report recommended that the Board be abolished as a Board if the proposed plan as outlined in the report of the Board is followed.

The Board of Internal Improvement submitted with this report a bill which was enacted into a law, approved January 6, 1855, and became Chapter 610, Laws of Florida. Sections 1, 2, 4, 15, 16, 27 and 29.

TRUSTEES OF INTERNAL IMPROVEMENT FUND DESIGNATED—1855.

The Bill proposed by the Board of Internal Improvement was enacted into a law, approved January 6, 1855, and became Chapter 610, laws of Florida.

By the provisions of this act all the swamp lands granted to this State by the Act of Congress approved September 28, 1850, were set apart and declared a distinct and separate fund, to be called the "Internal Improvement Fund of the State of Florida," etc. "to be strictly applied according to the provisions of this act" (section 1) and "for the purpose of assuring a proper application of said fund for the purposes herein declared, said lands and all of the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five Trustees, to-wit: the Governor, the Comptroller, the State Treasurer, the Attorney-General, and

the Register of Public Lands and their successors in off
ce, to hold the same in trust for the uses and purpose
hereinafter provided, with the power to sell and trans
fer said lands to the purchasers and receive payment fo
the same, and invest the surplus moneys arising there
from, also the surplus interest accruing from such in
vestment. * *

The trustees of the Internal Improvement Fund sha
hereafter fix the price of the public lands included in th
trust having due regard for their location, value fo
agricultural purposes, or on account of timber or nava
stores, and make such arrangement for the drain
age of the swamp and overflowed lands as i
their judgment may be most advantageous to the Inter
nal Improvement Fund and the settlement and cultiva
tion of the land, and the said trustees shall encourag
actual settlement and cultivation of said lands by allow
ing pre-emption under such rules and regulations as the
may deem advisable, provided that in no case shall a pre
emption for more than one section of land be granted t
any one settler. * * *

DIRECT AND EXPRESS TRUSTS.

Counsel for Appellees assert that this deed of trus
Chapter 610, Laws of Florida, vested in the Trustee
therein named and their successors in office, direct an
express trusts, as defined by the authorities on this sub
ject.

Sec. 24, Vol. 1, Perry on Trusts.

(2) That they are public trusts for public good, tha
they concern the general and independent public.

Sec. 22, Ib.

That the Trustees are vested with a discretionary trust under said law requiring the exercise of judgment and discretion as to time, manner, sale, etc., of the properties belonging to the fund.

Sec. 19 Ib.

LEGISLATIVE REPORT.

Showing the construction that the legislature placed upon Chapter 610, Laws of Florida, contemporaneously with its enactment.

On January 8, 1855, House Journal page 272, the Committee of Internal Improvements to which was referred a bill to be entitled "an act to remove the obstruction to the navigation of the Suwannee River," reported that the improvement may be, and doubtless is, one of importance, but it will be seen that the bill proposes to pay the contractor, who undertakes and completes the work, with lands situated on the Suwannee River, known as swamp and overflowed lands.

"In view of the legislation of the present session the Committee cannot give their approbation to any such disposition of them. If done, would be inconsistent legislation, possibly giving rise to difficulty and embarrassment."

VETO OF THE GOVERNOR.

On January 9, 1855, the Governor, in his message to the House, returning, without approval, an act for the relief of the purchasers of swamp and internal improvement lands from the United States, writes:

"The Bill requires the Register of Public Lands to make the State's title to such Internal Improve-

ment or swamp lands as may have been or may hereafter be purchased by individuals of the United States on such individual relinquishing his or her claim against the United States for the purchase money, etc." States sections 1 and 2 of the act of January 6, and writes: "These sections seem to have been specially designed to vest this whole fund irrevocably in Trustees, for certain purposes specified in the deed of trust, and certainly commits to them the power to sell and to transfer. The act under consideration seeks to withdraw this power from them, in a certain class of cases and confer it upon the State Legislature. If the power now exists in the General Assembly to withdraw any portion of the fund, it exists to withdraw the whole and may be used to defeat the objects of the trust. Such is not, I am sure, the design of the present general assembly, but an action on their part seeming to assert such a reservation may lead to embarassment hereafter." (Upon the question of the passage of the bill over the veto of the Governor, the vote was: Ayes, none, Nays, all. Page 306.)

(2) The Governor returned to the House on January 12, 1855, a Bill entitled "An Act incorporating the Florida & Macon Railway Company" and in his message, House Journal page 327, writes:

"Another objection may be found in the fact that in granting alternate sections of land for six miles on either side of the road and branches, all State lands are embraced, whereas, in granting lands to the Board of Trustees for purposes of internal improvement, the General Assembly only reserved power as is shown in Section 29 of the General Assembly bill, to grant alternate sections of swamp and overflowed lands to any subsequent charter, and this only on condition that it conform to the provisions of that general act in the manner of constructing the

road and drainage, etc. The charter under consideration does not so conform, and therefore, the power to grant land was not so reserved in its favor."

(3) The Governor, in his message to the legislature, November 24, 1855, House Journal, page 22, returning two bills granting certain swamp lands writes:

"The act (January 6, 1855) vests the whole fund in a Board of Trustees for certain well defined purposes, and divests the General Assembly of title. These bills seek under authority of the General Assembly to withdraw a portion of the fund, and if the power exists to withdraw any portion or for any purpose not expressly provided, then it exists to withdraw the whole, and the deed of trust is of no value. But such, I think, is not the case. The fund cannot be applied to objects other than specified in the general law, and therefore had the bills been signed, they could only have led to unpleasant litigation."

REPORT OF COMMITTEE ON INTERNAL IMPROVEMENTS.

The Committee on Internal Improvements, to which was referred a bill to amend the Act of January 6, 1855, reported to the legislature on December 12, 1855, page 133, House Journal, that they fully approved of the object of the bill, but that they could not recommend its passage for the reason that:

"Should the legislature have the power to control the discretion of the Trustees for good, they in like manner, would have the power to control their discretion for evil, and thus, this fund would be left to abide the ever fluctuating legislation of the succeeding General Assemblies."

Recommending that the bill do not pass in its present form, but recommend in lieu thereof the passage of a resolution expressing the sentiments of the General Assembly on the subject in the same terms used in the bill. Resolution adopted, page 139.

SECOND COMMITTEE REPORT.

The Committee on Internal Improvements to whom was referred a bill for the relief of William Sapp, reported to the Senate December 10, 1855, page 88, Senate Journal, that Sapp purchased from the State land belonging to the Internal Improvement Fund, but since that time "the legislature has vested the land in the hands of the Trustees." Your Committee believes that the legislature has no power to relieve the party, but would recommend him to the Trustees of the Internal Improvement Fund for relief," which was received and concurred in.

OTHER RESOLUTIONS.

(a) On December 14, 1855, the legislature declared (Res. No. 3) that the delay at Washington to confirm the claim to certain swamp lands was detrimental to the interests of the State "by keeping these lands in a position in which they can neither be purchased nor secured by pre-emption" and resolved that the Trustees "be requested to offer these lands for sale at such price and under such regulations as they, in their wisdom may see fit to establish, as soon as possible after the title to the State to them has been confirmed."

(b) On January 1, 1857, the legislature by act (Chapter 801, Laws of Florida) provided for a Canal

Commission, and for the construction of canal between the St. Johns and Indian Rivers, and Section 12 of that act provides that "nothing in this act shall be so construed as to assert any power of authority on the part of the General Assembly of this State to destroy, or in any manner interfere with the vested right enacted by the act hereinafter referred to entitled "An Act to provide for and encourage a Liberal System of Internal Improvement.

(c) On January 13, the legislature, by Resolution No. 17, declared that as the Trustees had resolved that they would grant portions of swamp lands on both sides of the Ocklawaha River to any person removing the sand banks and rafts with a view to reclaiming the swamp lands adjacent, resolved "That in the opinion of this General Assembly, as the Trustees have agreed to make a grant of land, as declared in the above cited resolution, they ought in fairness to make a like grant on each side of the Suwannee River upon the like terms." The legislature did not assume to have the power to make such grant.

(d) On January 13, 1859, the legislature by Resolution No. 21, provided that a Committee be appointed to examine and report to the General Assembly among other things, "what arrangements, if any, have been made by the Board of Trustees for carrying out the provisions of the act of Congress giving the swamp lands to the State, which provides that the proceeds of said lands, whether from sale or direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of draining said lands by means of levees and drains."

(e) On January 13, 1859, by Resolution No. 25, the legislature declared that as the sixteenth section of the

act approved January 6, 1855, authorized and required the trustees to make such arrangements for the drainage of the swamp lands as in their judgment may be most advantageous to the Internal Improvement Fund," Resolved, "That they be instructed to take into consideration the drainage of the lands along the Ocklawaha River "and are hereby recommended to employ a competent engineer."

(f) On January 14, 1859, by Resolution No. 31, the legislature declared that as the General Assembly passed an act to pay Nathan Norton one hundred dollars for expenses in defending the title of the State to a part of the overflowed and swamp lands, that the trustees "ought to pay out of the proceeds of the swamp lands into the treasury of the State the sum of one hundred dollars to replace this amount."

(g) Chapter 1025, December 22, 1859, to incorporate the Lake City and Suwannee River Railroad Company, declared in Section 18, that said railroad is a proper improvement to be aided "as expressed in Section 29" under act approved 6th day of January 1855, and shall be entitled to the alternate sections for six miles on each side of said road when completed, provided said company shall in all respects comply with the requirements of the act.

(h) Chapter 1033, December 22, 1859, provided that the trustees may have power to grant to the Perdido Railroad company "such alternate sections of swamp and overflowed lands now lying and being in Escambia County, as they may deem necessary and proper to be granted in aid of the construction of said road and for clearing out the Perdido River and for draining the lands adjacent thereto."

(i) December 13, 1886, by Resolution No. 5, the trustees are requested to appropriate not to exceed ten thousand dollars for the purpose of cleaning out the Chipola River and draining the swamp and overflowed lands contiguous, and to make donations of alternate sections of swamp lands on said river to promote such object, provided that the said improvements shall increase the value of the swamp lands on said stream.

(j) December 13, 1886, by Resolution No. 10, the trustees are requested to make donations of alternate sections of swamp lands on or near the Ocklawaha River on such terms as may be best calculated to effect the clearing of said river and the drainage of said lands.

LEGISLATIVE CONSTRUCTION

and recognition of the discretionary powers of the Trustees in the management, sale and control of the swamp and overflowed lands irrevocably vested in the fund for the purposes, uses and trusts expressed in the provisions of Chapter 610, Laws of Florida.

(a) On July 28, 1868, Chapter 1644, The Southern Inland Navigation and Improvement Company was granted "by and with the consent of the trustees," the right of way through lands owned by the State, and the title to four hundred feet on each side of the canals cut or streams improved.

(b) On August 3, 1868, Chapter 1645, the Jacksonville and St. Augustine Railroad Company was granted "by and with the consent of the trustees" title to all lands held by the trustees for six miles on both sides of the said railroad.

(c) On August 6, 1868, Chapter 1651, the St. Johns Halifax Navigation and Improvement Company was

granted "by and with the consent of the trustees," the right of way and the title to lands for four hundred feet on each side of said road.

(d) On February 18, 1870, Chapter 1768, the legislature granted to the Jacksonville & St. Augustine Railroad Company swamp lands within six miles on each side of its line "by and with the consent of the trustees;" provided that the proceeds by sale of the lands shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of drainage or like means.

(e) On February 19, 1870, Chapter 1769, Section 12, there is granted to the Great Southern Railway Company, "with the consent of the trustees" the same number of acres per mile of the swamp lands as may be granted to said company by the United States, and said lands are granted subject to the provisions of the act of September 28, 1850.

(f) On December 22, 1859, Chapter 1020, Laws of Florida, was approved (Section 1); the trustees are "authorized and empowered to contract for the cleaning out of the channel of the Ocklawaha river for the purpose of draining the swamp lands contiguous thereto."

(g) On January 15, 1859, by Resolution No. 27, the legislature declared that as the State owns much land on the Chattahoochee River "which would be greatly increased in value by improving said river" that the lands should be selected as even or odd numbered sections and sold by the trustees as in their judgment was deemed best, and the money therefrom applied to the improvement of said river.

(h) Chapter 1171, February 14, 1861, provides that the trustees shall contract for the clearing and improving the channel of the Apalachicola River "to reclaim the swamp and overflowed lands on said stream."

(i) Chapter 1198, February 12, 1861, provided that the trustees are authorized and empowered to contract for the cleaning out of Weekiva Creek and Clay Spring River " for the purpose of draining the swamp lands contiguous thereto.

(j) Chapter 1199, February 14, 1861, provides that the trustees are authorized and empowered to make contracts for the clearing out of Pease Creek "for the purpose of draining the swamp and overflowed lands thereon."

(k) Chapter 1207, February 12, 1861, declared that the Trustees are authorized and empowered to contract for the cleaning out of Chipola River "for the purpose of draining the swamp and overflowed lands contiguous thereto."

(l) Chapter 1264, February 14, 1861, provides that the trustees shall contract for the cleaning out and improving of the Withlacoochee River as far as they may deem expedient and practicable "for the purpose of reclaiming the swamp and overflowed lands contiguous thereto."

(m) Chapter 2001, February 19, 1874, Section 2, provided that if by the construction of the railroad from Gainesville to the gulf any swamp lands "shall be reclaimed" one half of said lands shall be the property of the company.

(n) Chapter 728, December 15, 1855, incorporated

the Pensacola and Georgia Railroad Company, and provided that it should have the aid and benefit contemplated by the 29th Section of the Act of January 6th, 1855.

(o) Chapter 855 granted the alternate sections of the swamp lands within six miles on each side of the Alabama and Florida Railroad from Pensacola to the State line, and, Chapter 936, the alternate sections to the railroad from the St. Johns River to St. Augustine.

(p) The legislature of 1861 incorporated, by Chapter 1153, a railroad from St. Augustine Bay to the State line, and provided that it should have the alternate sections for six miles, in the manner provided by the 29th section of the act of 1855. A similar grant of alternate sections for six miles was made by the legislature in 1866, Chapter 1572.

(q) The legislature of 1877 by Chapters 3066 and 3072, provided that the Stirling and Jacksonville Railroad Company and the Orange Lake Railroad Company should have all the rights granted to railroads in this State.

VETO MESSAGE OF GEORGE F. DREW, GOVERNOR, 1879.

All railroad land grants and acts containing provisions to divert the internal improvement fund, or divest the trustees of title, or of powers in the management of the fund, or to control the discretion of the trustees in the performance of their duties, were rejected by the legislature, or vetoed by the governors, and sustained by the legislature, without an exception to the year 1879, at which session of the legislature certain acts were passed granting lands to certain railroad companies, which are

enumerated in the veto message of His Excellency Governor Drew, under date of February 25, 1879, which veto message is as follows:

Executive Office,
Tallahassee, February 25, 1879.

Hon. W. D. Barnes,
President pro. tem. of the Senate:

Sir: I have the honor to return through you to the Senate three bills which originated in that body. One is entitled "An act to grant certain lands to the Tampa, Pease Creek and St. Johns Railway Company," the second "An act to grant certain lands to the Gainesville, Ocala and Charlotte Harbor Railroad Company;" and the third, "An act to incorporate the Chattahoochee and Pensacola Railroad Company."

The first bill proposes to grant to the Tampa, Pease Creek and St. Johns Railway Company the alternate sections of the swamp and overflowed lands granted the State by the act of Congress of September 28, 1850, lying along and adjacent to the St. Johns River, a distance of about one hundred and ten miles (110), to the extent or quantity of ten thousand acres per running mile, and further provides, that if any of such lands are sold before a survey of the route is filed in the office of the Secretary of State, then that the quantity so sold, shall be made up from the even-numbered sections of such lands or any state lands lying nearest the line. Upon the grading of ten miles of the road-bed and placing cross ties thereon, the Trustees are to convey to this Company, lands at the rate of ten thousand acres per running mile, and so on for each ten miles "graded and tied" until the completion of the road, it being provided, however, that for every forty miles so graded and furnished with ties, there shall be ten miles of road fully equipped and in running condition.

The second bill proposes to grant to the Gainesville, Ocala and Charlotte Harbor Railroad Company (No. 1), the alternate sections of swamp and overflowed lands for fifteen miles on either side of its projected road, including its branches, to the amount or quantity of eight thousand acres per mile.

The proposed line of road is to commence at or near Lake City, in Columbia County, and run in a southerly direction through or near Gainesville, in Alachua County, Ocala in Marion County, Leesburg in Sumter County, and Brooksville in Hernando County, to the waters of Tampa Bay, with one branch from some point in Sumter County, through or near Bartow, in Polk County, to the waters of Charlotte Harbor, in Manatee County, and another branch to Palatka, in Putnam County. The length of this line, including the two branches, is at least four hundred miles. The Trustees of the Internal Improvement Fund are to withdraw from sale, the lands covered by this grant, and lying adjacent to each section of twenty miles, being filed with them, and so on, until the whole route is surveyed. The Trustees may make sales of such lands to actual settlers, and are to place the proceeds thereof to the credit of the Company. As the Company constructs sections of ten miles of the road, the Trustees are to convey to it, the lands so granted adjacent to the completed road. Should any deficiency of land be found upon filing the preliminary survey, the Trustees are to supply the same by granting other lands adjacent to and nearest the line of road.

The third bill proposes to grant to the Chattahoochee and Pensacola Railroad Company, whose projected line of road is to extend from the Apalachicola River, at or near the terminus of the Jacksonville, Pensacola and Mobile Railroad, westward to Pensacola Bay, with an extension to St. Andrews Bay, and with branches to Freeport, on Choctawhatchie Bay, and to the Perdido River, and to the Ala-

bama line, west of the Escambia River, a distance of about two hundred and seventy-five miles, the aid provided for in the Internal Improvement Act (Chapter 610) and its amendments, including those which may be passed at the present session, and also the swamp and overflowed lands lying along and adjacent to said line, its extensions and branches, to the amount of ten thousand acres per lineal mile; and the Trustees of the Internal Improvement Fund are authorized, upon the grading of sections of five miles and putting cross ties thereon, to convey to the Company, ten thousand acres of such lands for each mile, it being provided that for every forty miles of road so graded and furnished with ties, the Company shall equip ten miles in a manner suitable for carrying passengers and freight before any other lands shall vest in such Company.

The company is not, however, to take under the act more than ten thousand acres per mile. Should any of the lands granted be sold after the passage of this act and before the survey of the route, or should the lands adjacent to the route be insufficient to supply the number of acres granted, the deficiency is to be made up from other "swamp and overflowed internal improvement or state lands," nearest the route. After the commencement of the line of railway, all the lands granted and lying west of the Apalachicola and Chattahoochee Rivers are to be withdrawn from market, till after the expiration of the time allowed for the completion of the road, unless the charter is sooner forfeited. The road is to be commenced in one and completed in five years.

An early development of our State is the desire of every good citizen, and should be the aim of all persons of individual or official influence. Nothing will secure this result sooner than the construction and operation of railroads, managed by persons feeling an interest in the country and controlling their business upon those healthy principles of reciprocal

support, which always exist between the proprietary carrier on the one hand, and the producer and consumer on the other. I yield to no one in earnest wishes to see such an end attained; and the character of the corporators, in the above named companies, satisfies me that if the roads proposed should be constructed, that their completion would soon be followed by a new era of prosperity and happiness to our people, and it is only in obedience to a pressing sense of official duty that I consent to withhold my approval of the bills named. The reasons for so doing I will now submit.

The lands covered by these grants are those granted to the State by the United States by the Act of September 28th, 1850, and are commonly known as the "Swamp and overflowed lands." As is well known, these lands and the five hundred thousand acres of internal improvement lands granted to the State by the Act of Congress of September 4th, 1841, were, by the act of the legislature, entitled "an act to establish a liberal system of internal improvement in this State" approved January 6th, 1855, vested in the Board of Trustees of the Internal Improvement Fund of the State. To this Board was given power to make arrangements for reclaiming swamp and overflowed lands as contemplated by the act of Congress of September 28th, 1850, and decided by our Supreme Court in the case of the Trustees of the Internal Improvement Fund vs. Gleason, (15 Florida) and to manage and sell the lands. The net proceeds of the sale of these lands, over and above the amounts necessary for the purpose of management and reclamation, were, by this Act of January 6, 1855, pledged to the payment of the interest on the bonds which might be issued by railroad companies which should undertake the construction of any part of the line of railroad from the St. Johns River to Pensacola Bay, with an extension from suitable points on this line to St. Marks River, or

Crooked River at White Bluff on Apalachicola Bay in Middle Florida and to the waters of St. Andrews Bay in West Florida, and a line from Amelia Island to Tampa Bay, with an extension to Cedar Key. Certain companies constructed railroads on these lines from Jacksonville, on the St. Johns River, to Quincy, in Middle Florida, and from Tallahassee to St. Marks, and from Amelia Island to Cedar Key. To aid in their construction these companies issued bonds, which were indorsed by the trustees of the Fund, with an agreement guaranteeing the payment of the interest thereon out of the proceeds of the land. Thus these lands became pledged to the payment of this interest.

It was a provision of this act of January 6, 1855, that no bonds issued after the end of eight years from its passage should be so guaranteed.

There are now outstanding of the past due coupons, representing the interest on these bonds about $367,000, and as these coupons, like other negotiable paper, bear interest themselves, there is now due upon these about $650,000.

These are the amounts given by the Master in the Vose case. There are additional coupons. It was the evident intent and purpose of the Internal Improvement Law that these lands or their proceeds should be applied to no purposes of internal improvement other than those named in the fourth section of that act, until the coupons had all been paid, or at least placed on a safe basis of payment. That this was the contract between the coupon holder and the State, is not only plain from the language of the act, but has several times been adjudged by the courts, and it is shown by the history contemporaneous with the enactment of the law.

In November, 1855, Governor James E. Broome vetoed two bills, one entitled "An act granting certain lands to the Palatka and Micanopy Plankroad Company," and the other entitled "An act to remove

the obstruction to the navigation of the Suwannee River." These acts, as will be inferred from their titles, contemplated the use of lands or their proceeds for purposes not embraced in the internal improvement act.

In speaking of the Internal Improvement Act he says: This act vests the whole fund in a Board of Trustees, for certain well defined purposes, and divests the General Assembly of the title. These bills seek, under the authority of the General Assembly, to withdraw a portion of the Fund; and if the power exists to withdraw any portion or for any purpose not expressly provided, then it exists to withdraw the whole, and the deed of trust is of no value. The Fund cannot be applied to objects other than those specified in the general law; and therefore, had the bills been signed, they could only have led to unpleasant litigation." It is unnecessary to say that these bills never became laws.

A careful persual of the journals of these years will discover how fully it was the intention of the legislature, as understood by contemporaries, to appropriate these lands to objects set forth in the Internal Improvement Act, and to prevent, not only any diversion of them from such purposes, but anything that would interfere with the management of that fund by the Board of Trustees in the interests of the objects for which it was thereby pledged.

In 1861 when the fund was not embarrassed anything like it is now, or at all, save for the state of war in which the country then was, it was attempted by the Legislature to appropriate part of this fund to cleaning out the channel of the Apalachicola River. In a suit instituted by a holder of bonds, the interest on which the fund was pledged to pay, it was held by the Supreme Court of the State, that the Legislature had the power to pass the Internal Improvement Act and so pledge the lands and money composing that fund, and that it constituted a contract with

the bondholders, and that the improvement of the channel of the river not being one of the improvements designated in the Internal Improvement Act, that the act of 1861 was in derogation of the rights of the bondholders, and therefore unconstitutional and void.

Trustees vs. Baily, 10 Fla .

In the case of Gonzales vs. Sullivan, 16 Fla., 817, the Supreme Court, in speaking of the above case, says:

"The ground of the action was that the measure of right of the holder of the bond was the act of 1855; that upon a sale of the bonds therein authorized rights became vested, a contract was brought into existence; that the terms of the law measured its obligation, and that the act appropriating funds for the improvement of the river was a violation of that contract in that it divested a portion of the fund pledged for the payment of the bond contrary to the terms of the law." * * * * "That case is authority for the position that an antecedent bondholder can set aside or enjoin an appropriation of the fund for any purpose to which it was not applicable at the time his right as bondholder attached."

In the case of the Trustees vs. The St. Johns Railway Company (16 Fla.), the Internal Improvement Act is held to have for one of its main objects the carrying into effect of the purposes of the grant of Congress under the Act of September 28, 1850, and the court says that the "companies" accepting it, their creditors and the Trustees, acquired all the rights conferred by this act, subject to its restrictions and reservations, which formed a part of the law of their contract with the State when they accepted its provisions.

Subsequent to 1868 and prior to 1873, the trustees of the Internal Improvement Fund attempted to donate or sell at nominal prices these lands for pur-

poses other than as contemplated by the act. The result was a suit by the holders of the bonds, and an injunction, and finally the appointment of a receiver, to whom all moneys derived from sale of lands are paid, to be applied to the payment of coupons, as contemplated by the Internal Improvement Act. In this case (Vose vs. Trustees, 2 Wood) Mr. Justice Bradley, in speaking of the case of the Trustees vs. Bailey, says: "By the decision in that case, neither they (the Trustees) nor the legislature itself have the right to appropriate any part of the Internal Improvement Fund to the promotion of any other schemes of internal improvement than those mentioned in the act of 1855, until the bonds issued to carry out the system herein mentioned have been paid or placed on a safe basis of payment as prescribed by the act." He also, in speaking of the injunction before alluded to, says: "The Trustees and their successors were enjoined from selling or disposing of, or donating the land belonging to the trust otherwise than in strict accordance with the act of 1855," or "from using or applying any of the moneys of the fund, except in applying them to the creation of the sinking fund under the act, or in the payment of coupons, according as they belong to one purpose or another," and the trustees are required to pay to the receiver all moneys in their possession or control, and to pay him from time to time all moneys which might come into their hands from the sale of lands or any other source whatever.

In the light of these authorities and history, it is plain that neither the legislature nor the trustees can divert these lands from the payment of the interest on the bonds. The only question, then is, whether or not these bills propose any such diversion.

The legislature by the twenty-ninth section of the Internal Improvement act, expressly reserved the right to grant alternate sections of the swamp and overflowed lands for six miles on each side of

roads of companies thereafter chartered, and grants of such sections within such limits made thereunder are proper, and will doubtless receive the approval of the courts, as in the case of the grant to the St. Johns Railway Company, reported in the 16th volume of the Florida Reports. Admitting, however, for the sake of argument, that the bills are effectual as to the alternate sections now owned within the limit of six miles, it is plain that outside of this limit they are in violation of the contract with the bondholders. The whole number of acres of land proposed by these grants to be donated, outside of the alternate sections within six miles, even if we assume that all of these alternate sections are still the property of the fund, would be 4,028,000 acres, but it cannot be safely assumed that there are more than one million acres in the alternate sections now belonging to the fund. The whole quantity of lands granted to these companies within and without this limit is seven million acres, so deducting the one million acres, we have here grants of six millions of acres, which, as above shown, are pledged to the payment of the interest on the bonds, and cannot be diverted from the purposes of the internal improvement act, within which the schemes proposed by these bills do not fall. The whole quantity of land so far selected as swamp and overflowed lands is about fifteen millions of acres. Of this about 1,600,000 have been heretofore disposed of, leaving about 13,400,000 acres selected. Only, however, 11,749,000 acres have been confirmed by the United States government, and taking from this the amount disposed of, there is on hand, under control of the Board, only 10,200,000 acres. So, from this fund of 10,200,000 acres, the seven millions of acres granted by these bills is to be taken, and thus seven-tenths of the fund pledged as above stated is disposed of contrary to the contract.

Judging from the sales found from lands in the last twelve years, no other conclusion can be reached

than that any such grants would be a most serious blow to the creditors of the fund. These sales during this period, with the whole fund to sell from, have not more than kept down the interest on the past due coupons. Should the seven million of acres be withdrawn from the market, the sales would not even approach such a result. So it is evident that such legislation would be very far from putting the creditors on a safe basis for the payment, which must be done before any other internal improvement than those mentioned in the internal improvement act can become a beneficiary of the fund, either from the action of the legislature or the board. These grants would tend to deter purchasers in case the legality of the same was insisted upon by the companies, and thus another injury would result from them.

In view of the existence of the contract and of the injunctional orders under which the Board and fund are, the burden will be upon the grantees in these bills to assert the validity of the grants. The Board will be compelled to obey the injunctional orders of the court, made to secure the application of the funds to the purposes of the act, until a reversal of them shall have been obtained. It is very difficult to conceive upon what ground any court would reverse that current of decisions which has for years, in such strong, clear and uninterrupted flow, swept away every opposition to the lawful property of the internal improvement act, and the inviolable contract rights of the holders of bonds issued thereunder. In the shape in which this legislation comes, the right of these companies to the alternate sections within the six mile limit is so mingled and mixed up with the attempted grant beyond these limits, that it is made as doubtful and as difficult of assertion as any form of legislation can make it.

It would be a blessed consummation if this legislature would start a well digested scheme looking to the roads of Tampa and Pensacola Bays, with such

aid as the Internal Improvement Act permits to the other lines contemplated by these bills. Such a scheme, embodying in it the settlement of the present indebtedness of the fund would be productive of great good. The grant alternate sections within the six mile limit, attended by a consideration of the roads upon the terms of the Internal Improvement Law, will render the residue of the sections in the same locality more valuable than both were before.

It must be plain to every one that until the fund shall be placed in a more healthy condition as to meeting its past obligations, such legislation as that now proposed can be of no value to the State, nor of any benefit to the grantors thereunder, at least beyond the grant within the six mile limit. Besides this, we all know how necessary and wise it is for private and public bodies, looking to a future involving a necessity for financial credit, to adhere strictly to contracts that have been made; particularly at this time, when they have been adjudicated and explained by the courts.

The sixteenth article of our Bill of Rights declares that no law impairing the obligation of contracts shall ever be passed, and believing as I do that these bills are in violation of this provision, I am compelled, for the reasons stated, to withhold my signature.

Very respectfully,

GEO. F. DREW,
Governor of Florida.

It appears from an inspection of the Journals by counsel that this veto message of Governor Drew was not voted upon by the legislature, but was referred to a Committee, which committee prepared a bill that was introduced as a Committee Bill (Senate Journal, pages 378-9-80, House Journal 452-475-476, Senate Journal 396-414; Signed by Governor, page 442.) to "incorporate

the Gainesville, Ocala and Charlotte Harbor Railroad Company" and became Chapter 3167, Laws of Florida, approved March 4, 1879, which attempts to grant ten thousand acres of land for each mile of road in addition to the alternate sections within six miles of the road, of the lands granted to the State of Florida under Act of Congress of September 28, 1850.

SUBJECT TO TRUSTS UNDER CHAPTER 610, LAWS OF FLORIDA.

This grant was made subject to trusts by a provision in Chapter 3167 that "it is made subject to the rights of creditors and of the trusts under the act of January 6th, 1855, and to the control, management, sale and appropriation by the Trustees."

THE BEGINNING OF LAND GRANTS

which were expressly made subject to the trusts and provisions of Chapter 610, Laws of Florida.

During the same session Chapters 3168, 3170 and 3173, were passed. Chapter 3171 is a grant of alternate sections, the proceeds of said lands to be applied to the purpose of reaching of same by drainage, showing conclusively that the legislature of the State of Florida recognized the deed of trust vesting the fund irrevocably in the Trustees for the purposes and trusts therein mentioned, under Chapter 610.

ALL GRANTS MADE SUBJECT TO THE TRUSTS ENUMERADTED IN CHAPTER 610.

"Chapter 3326, approved March 4, 1881, contains "this language: 'That any and all grants of lands "other than the alternate sections within the usual

"six mile limit made, or that may be made by any "act passed, or to be passed at the present session "of the legislature, shall be subject to the rights of all "creditors of the Internal Improvement Fund and "to the trusts to which said fund is applicable and "subject under the act approved January 6th, 1855, "and entitled 'An Act to provide for and encourage "a Liberal System of Internal Improvement in this "State,' and subject to control, management, sale "and appropriation of said fund and the lands con- "stituting the same by the Trustees of the Internal "Improvement Fund for the purposes of said trust "under said act."

The following land grants were enacted prior to the enactment of appellant's alleged grant, and have priority thereto, and must be satisfied before the complainant can obtain any lands out of the Internal Improvement Fund under its alleged grant, even were the same valid:

Session 1881:

Chapter 3328
Chapter 3329
Chapter 3330
Chapter 3331
Chapter 3332
Chapter 3333
Chapter 3334
Chapter 3335
Chapter 3336
Chapter 3337
Chapter 3338
Chapter 3342

Session 1883:

Chapter 3484
Chapter 3485
Chapter 3486
Chapter 3488
Chapter 3491
Chapter 3492
Chapter 3493
Chapter 3494
Chapter 3500.
Chapter 3495
Chapter 3496
Chapter 3498
Chapter 3499

Session 1885:

Chapter 3640
Chapter 3641
Chapter 3644
Chapter 3645
Chapter 3646
Chapter 3648
Chapter 3650
Chapter 3651
Chapter 3656.
Chapter 3652
Chapter 3653
Chapter 3654
Chapter 3655

Session 1887:

Chapter 3798	Chapter 3801	Chapter 3822
Chapter 3799	Chapter 3808	Chapter 3823

Session 1889:

Chapter 3988 Alt.	Chapter 3995	Chapter 3191
Chapter 3998	Chapter 3996	Chapter 3900
Chapter 3990	Chapter 3899	Chapter 3901

Session 1891:

Chapter 4074	Chapter 4100	Chapter 4104
Chapter 4097	Chapter 4101	Chapter 4114
Chapter 4099	Chapter 4103	

REVISED STATUTES OF FLORIDA ADOPTED 1892.

The provisions of Chapter 3326, approved March 4, 1881, was incorporated in the Revised Statutes of Florida as Section 440. The provisions of this Chapter 3326 relating to and making subsequent legislation subject to the rights of all creditors of the Internal Improvement Fund and the trusts to which said fund is applicable and subject under the act of January 6th, 1855, and subject to control, management and sale and appropriation of the fund and the lands constituting the same by the Trustees of the Internal Improvement Fund for the purposes of said trusts under said act, became Section 440 of the Revised Statutes of the State of Florida.

Session of 1893:

Chapter 4252	Chapter 4255	Chapter 4262
Chapter 4253	Chapter 4259	Chapter 4266
Chapter 4254	Chapter 4260	Chapter 4267

Chapter 4267, approved May 31, 1893, is the act upon which the Appellant bases his bill of complaint, which was subsequent to and subject to the provisions of Section 440 of the Revised Statutes.

Other Chapters of the legislature have been enacted, but are made subject to the trusts and control of the Internal Improvement Fund, as set forth in Chapter 610.

Session 1895:

Chapter 4465	Chapter 4469	Chapter 4477
Chapter 4467	Chapter 4474	Chapter 4478
Chapter 4468	Chapter 4475	Chapter 4482
	Chapter 4483.	

Session 1897:

Chapter 4619	*Chapter 4623*	Chapter 4625

Session 1899:

Chapter 4804	*Chapter 4632*	Chapter 4842

It is not contended that these Chapters, subsequent to Chapter 4267, have any bearing on this case, but are referred to simply to show a continuation of the recognition by the legislature of the irrevocable vestiture of the lands in the Internal Improvement Fund, and the discretionary control of the fund by the Trustees, and that the enactments of the legislature were made subject to the claims of creditors and the trusts mentioned.

MISCELLANEOUS RESOLUTIONS.

In 1889 the Senate appointed a special Committee to examine and report what quantity of lands had been conveyed to the railroad and canal companies, which Committee reported, showing that the railroad and canal companies were indebted to the State $1,506,936.51.

The Senate passed a resolution in 1891, No. 1, directing the Attorney-General to institute legal proceedings to compel a settlement by the said railroad and canal companies.

In 1893, by Resolution No. 14, the Attorney-General was directed not to institute legal proceedings under the former resolution, for the reason that there are no lands due from any railroad to the State, directing the trustees to make investigation and take such legal advice as they saw fit to determine if any lands are due and owing to the Internal Improvement Fund.

Chapter 4267 NOT a Grant in Praesenti.

Counsel submits that Chapter 4267 is NOT a grant in praesenti; that it is not possessed of the essential elements of a present grant, which are:

(a) Title; (b) lands; (c) grantee capable of a present grant.

That Chapter 4267 is subject to:

(1) The provisions of Chapter 610, vesting the lands irrevocably in the Internal Improvement Fund (the lands sought to be granted) with all the trusts therein enumerated, and the control, management, sale and disposition of the trustees; the main trust being to drain and reclaim the swamp and overflowed lands in Florida.

(2) It is subject to seventy-nine previous acts of the legislature attempting in some degree to grant certain of the lands of said fund as heretofore enumerated.

(3) To the superiority of all contracts and undertakings entered into by the trustees with canal and drainage companies, and others, for the purpose of draining and reclaiming the swamp and overflowed lands afore-

said, which has been recognized by all trustees from the year 1855 to the present time, without an exception, as will appear by an examination of the minutes of the trustees, Volumes 1, 2, 3, 4 and 5.

(4) Chapter 4267 is further subject to a strict compliance with the provisions of said act as to location, construction of a railroad, certificates, etc., which compliance is denied, as will appear by resolution of the trustees on page 281, Volume 4, under date of June 22, 1894, in which is shown the vote of the trustees on a resolution, which is there denied four to one; and by a further resolution adopted by the trustees in 1897.

(5) It is further subject to the previous claims of railroads constructed prior to the alleged construction of the Appellant's road, and claims of canal and drainage companies as follows:

Pensacola & Atlantic, balance claimed	1,017,376.99
Florida Southern	301,990.00
J. T. K. W. Co	19,696.00
P. & I. Railroad	322.00
S. S. O. & G	157,354.00
Jax. St. Augustine & Ind. River	2,040,000.00
Carrabelle, Talla. & Georgia	503,005.00
Blue Spgs. Orange City & Atl	90,775.00
Total acreage claim by Constructed Railroads	4,130,518.99
Total acreage claimed by Canal and Drainage Companies	870,636.43
	5,001,155.42

which in the aggregate is much greater than the total acreage of the swamp and overflowed lands of Florida,

there being on hand January 1, 1907, 1,531,162 as appears by the report of the Honorable Commissioner of Agriculture.

Counsel cites instances of grants in praesenti where the essential elements were present. The Act of Congress referred to, Chapter 610, Laws of Florida; the State then possessed (a) title; (b) the swamp and overflowed lands, and (c) the trustees designated were capable of accepting a present grant.

Chapter *791*, 1856, granting riparian rights, all elements being possessed, the grant being complete, no patent issued, nor was it necessary.

Sixteen section of school lands is a grant in praesenti, and no patent issued therefor.

Lands granted by the United States to the State of Florida for State capitol was a grant in praesenti, and no patent was required.

Other authorities referred to in this argument are cited in brief of counsel for Appellant filed in this cause sustaining Chapter 610, and the contention of counsel for Appellant that the swamp and overflowed lands were irrevocably vested in the Internal Improvement Fund, to be managed, *sold* and conveyed as in the *judgment* and *discretion* of the trustees and their successors in office was deemed most advantageous to the Internal Improvement Fund, the purposes of the trust and the drainage and reclamation of the swamp and overflowed lands in Florida is strongly urged.

Trustees I. I. Fund vs. Bailey, 10 Fla., 125.
Holland vs. State, 15 Fla., 523.
Trustees I. I. Fund vs. St. Johns Railway Co., 16 Fla., 531.
Williams vs. Mitchell, 43 Fla., 107.

It has been clearly shown that the Trustees were vested irrevocably with the lands described in the Complainants Bill, that the Trustees did sell the lands so described to the appellant, Neill G. Wade in good faith and for a valuable consideration, namely the value of the lands in question and that such sale was made in strict compliance with the law, and of their duty for the purpose of the trust as appears by the minutes of the Trustees of the Internal Improvement Fund in the exercise of their discretion and judgment, which I submit is conclusive.

Since the enactment of Chapter 610, Laws of Florida, vesting Swamp and Overflowed Lands in the Trustees of the Internal Improvement Fund, (twenty million) acres have been patented by the United States Government to the State of Florida under the Act of Congress, approved September 28, 1850 aforesaid, and for the purposes therein set forth made effective by the provisions of Chapter 610, Laws of Florida and the *trusts* therein set forth empowering the Trustees therein created and their successors to *sell said lands* and apply the proceeds of said land whether from sale or by direct appropriation in kind exclusively as far as necessary to the purpose of reclaiming said lands by means of the levees and drains aforesaid and the other *trusts* therein expressed. The Trustees in the faithful discharge of their duties and in compliance with the provisions of the laws referred to have disposed of and conveyed by formal deeds duly executed and delivered 18,673,148 acres. It is inconceivable that the Trustees intrusted with the great confidence reposed in them as high State officials of the people of a great State should have had the power and the lands to convey 18,000,000 acres of land and then not

have the power without any change in the law or in their powers to convey 103,000 acres of lands similarly circumstanced.

We submit that the Act in question is inoperative as against Appellee Wade and therefore appellant is not entitled to relief prayed.

The Act of January 6th, 1855, has never been repealed.

McGehee vs. Mathis, 4 Wall., 155.
Trustees Int. Imp. Fund vs. St. Johns Ry. Co., 16 Fla., 542.

A right is vested when it has already become a title legal or equitable, and the Legislature has no power to divest titles, legal or equitable, or legal or equitable rights.

Desty's Fed. Procedure, 155.
Gonzales vs. Sullivan, 16 Fla., 791.
Trustees I. I. Fund vs. Bailey, 10 Fla., 130.
Fletcher vs. Peck, 6 Cranch 87.

In the latter case, the Court says:

"When a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights."

Ferret vs. Taylor, 9 Cranch.
Winter vs. Jones, 10 Ga., 190.
Wilson vs. Mitchell, 43 Fla., 119.

COMPLAINANT'S LAND GRANT UNCONSTITUTIONAL.

In this part of our brief, we propose to state the argument and authorities upon which the case was decided adversely to the complainant in the Supreme Court of Florida.

The 17th point raised by the defendant's demurrer, is in effect that the *title* of said Act of the Legislature, approved May 24th, 1893, entitled "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company," is not sufficiently broad to apprise the Legislature and people, that the bill in question contained a grant of lands, and that such grant, not being within the subject expressed in the title, is therefore void and unconstitutional.

These contentions were sustained by the Supreme Court of Florida. The Supreme Court took judicial notice of the journals of the Legislature at which the Act under which complainant claims was passed. These journals show that the title of the bill, as it was under consideration and was voted upon by the Legislature, was merely as follows:

"A Bill to be Entitled An Act to Incorporate the Atlantic, Suwannee River & Gulf Railroad Company."

House Journal (Legislature of Florida), session of 1893, pages 78, 234 and 308.

"House Bill No. 99, to be entitled An Act to Incorporate the Atlantic, Suwannee River and Gulf Railroad Company was read the third time, and put upon its passage." *So the bill passed,* title as stated, and was ordered certified to the Senate.

House Journal, page 315.

House Bill No. 99, "To be entitled An Act to Incorporate the Atlantic, Suwannee River and Gulf Railroad Company," certified to the Senate.

Senate Journal, Session of 1893, page 365.

The bill was referred to committee (Senate Journal, 539). Engrossed, (Senate Journal, 620.)

Erroneously certified to the House, and recalled (Senate Journal, 728.)

Put upon its passage in the Senate, (Senate Journal, 707.) Certified to the House. No record of an amendment to the title of the Act. Ordered enrolled. (House Journal, page 738.)

Reported properly enrolled, (House Journal, page 446.)

Thus it will be seen from an inspection of the journals, that the present language of the title, as it appears in the printed Act, Chapter 4267, did not appear in the title of the Act until after it had passed both Houses and was transferred to the Joint Committee on Enrolled Bills.

Report of Committee on Enrollment (House Journal, 760).

> "The name of the corporation proposed to be chartered, and which charter was acted upon and passed by the legislative branch of the Government, was 'The Atlantic, Suwannee River and Gulf Railroad Company; and not 'The Atlantic, Suwannee River and Gulf *Railway* Company.' Nor does there appear to be any reference in said title to 'any aid in the construction of said Railroad,' until after the law had been enacted by both branches of the Legislature, and the same had passed into the hands of the Joint Committee on Enrolled Bills, and that Committee for the first time reported an additional title, namely: to grant said corporation certain privileges and to aid the construction thereof. This title was never voted on by either House, or offered as an amendment to the title as shown by the Journals thereof."

THE TITLE SHOULD ACCOMPANY A BILL IN ITS PASSAGE THROUGH THE LEGISLATURE.

It is during the passage of a bill that its title is intended by the constitution to impart information to the public and to members of the Legislature of the general subject of legislation. To effectuate that intent the title should accompany the bill in all its stages through the process of enactment. As stated by Simmonton, P. J.: "If a bill can be passed with a title which does not denote its subject, and after its passage the title can be amended so as for the first time to express its purpose, the constitutional provision is of little value." Only such portions of a bill as were included in the subject as expressed in the title when it passed the two houses and when approved by the Governor will acquire the force of law.

Suth. on Stat. Constr. (2nd Ed.) Sec. 126.
Bings vs. Weber, 81 Ills., 288.
Stein vs. Lupe, 79 Ala., 517.

The Supreme Court of Florida, in the case of the *State of Florida ex rel. Attorney-General vs. Greene, 36 Fla.,* 154, passed upon this question, and in the first head note thereof, used this language:

> "The constitutional requirements as to the mode and manner of enacting laws are mandatory, and where the journals kept by the two houses of the Legislature are silent as to matters required to be enacted upon them, or where they show affirmatively and explicitly that other constitutional requirements not directed to be entered on the journals have not been complied with in the enactment of a law, the journal evidence will control, and the act declared void."

Again, in the same case, the Court said:

> "The Governor acts as a part of the law-making power of the State in approving bills passed by the Legislature, and unless substantially the same bill that passed the two houses of the Legislature is submitted to him for approval, it can not become a law by his approval, or silence, or against his approval."
>
> "Under Section 3 of Article 16 of the Constitution the title of an act is made an essential and important part thereof, and it will have the effect to control the subject of the act and restrict its provisions to matters properly connected with the subject expressed in the title."
>
> "If the title of an act as it passed the legislative bodies, and when approved by the Governor, is so essentially different as to affect the whole act, it can not be said that the same act received the sanction of the entire legislative department of the government; but if the difference is immaterial and unsubstantial, it will not annul the law."

In this case of *State of Florida vs. Green*, supra, the title of the Act under consideration was: "An Act to Provide for the creation of the city of Pensacola, now known as the provisional municipality of Pensacola, and for the government of said city of Pensacola, *and to provide for its officers and their terms of office,*" etc.

The Supreme Court of Florida, said, (text, 172):

> "It will be seen that the italicised words in the title to the enrolled bill, signed by the Governor, are absent from the title to the bill as it passed the two Houses of the Legislature, as shown by their journal entries. It is claimed for the plaintiff in error that the journal record controls as to the evidence of what was the title of the bill while on its passage through both bodies, and that this evidence is

superior to that of the engrossed or enrolled bills found in the office of the Secretary of State. There are two conflicting views held by the decisions on this subject."

"Under constitutional requirements that journals of the proceedings of legislative bodies shall be kept and published, it has been held in many decisions that where the journal entries as to the legislative proceedings, are explicit, and conflict even with legislative acts regularly authenticated, the journals are superior, and the courts will be governed by them as to matters clearly, explicitly and affirmatively stated therein. The other view, maintained by high authority, is that the legislative act itself embodied in a bill engrossed and enrolled, and bearing the proper official signatures, is of higher dignity than the journals, and will override them. This court has placed itself on the side of those maintaining the view first stated. *(State ex rel. vs. Brown,* 20 Fla., 407. *State ex rel. vs. Deal,* 24 Fla., 193; *Mathis, vs. State,* 31 Fla., 291.); and as there is ample authority to sustain this view, we will not now make any departure. It is generally held that the plain constitutional injunctions as to the mode and manner of enacting laws, are mandatory, and the equally high authority that journals of the proceedings shall be kept, strengthens the view that the evidence of a compliance with such injunctions should be found in the journals. The inconvenience and danger resulting incidentally from the rule that the journals when clear and explicit as to the matters proper to be incorporated therein will control, can be guarded against by a proper observance of the prescribed procedure, and diligent attention to the making and preservation of the requisite journal evidence. * * * An examination of the journals of the two Houses of the Legislature, which must control us, leaves no room to doubt that the title of the act as it passed both houses differs, in the par-

ticulars mentioned, from the title of the enrolled bill approved by the Governor. The journal evidence of this fact is affirmative and explicit.

"It is settled by this Court, that the Governor acts as a part of the law-making power of the State, and unless substantially the same bill that passed the two houses of the Legislature is submitted to the Governor for his approval it cannot become a law by his approval or silence, or against his approval."

Advisory Opinion, 23 Fla., 297.
State ex rel. vs. Deal, 24 Fla., 293.

It is clear, therefore, that the Act which was approved by the Governor, and which appears in the published Statutes, was never enacted by the Legislature of the State of Florida, there being a marked distinction between the title of the Act that passed the Legislature, and the title of that which was submitted to, and approved by the Governor.

This Land Grant, therefore, is of no validity unless the words "to grant said corporation certain privileges and to aid the construction thereof" are matters properly connected with the subject as expressed in the title to the Act which passed the Legislature, to-wit: "An act to incorporate the Atlantic, Suwannee River and Gulf Railroad Company."

The title of an Act to create a named corporation does not confine the Act to the simple creation of the corporate entity; but under such a title, an act may define the powers of the corporation and regulate their exercise. Defining the powers of a corporation and regulating their exercise are matters properly connected with the creation of the corporation, and may, under the constitution, be embraced in the Act and need not be expressed in the title.

State ex rel. vs. Green, 36 Fla., 154, 177. Schiller vs. State, 38 South. Rep., 706.

But the granting of title to lands, is not a matter properly connected with the subject of the creation of a corporation in a legislative enactment. A land grant from the State requires an act of the Legislature, and, in the nature of things, cannot be a matter germane to or properly connected with, a subject of statutory incorporation.

Carr vs. Thomas, 18 Fla., 736 and 147, Ex Parte Wells, 21 Fla., 280. State ex rel. vs. County Commissioners, 23 Fla., 483. State ex rel. vs. Knowles, 16 Fla., 577.

The title of the act here considered is a very restricted one, and is not "An Act in relation to the A. S. R. & G. Ry. Co.," but it is "An Act to incorporate" the A. S. R. & G. R. R. Co., etc.

Our Constitution provides "that each law enacted shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title."

The "subject" of a law is the matter to which it relates and with which it deals.

"Subject" as used in a constitutional requirement that laws shall contain but one subject, which shall be plainly expressed in their title, is a very indefinite word. A phrase may state a subject in a general or indefinite manner or with minute particularity, yet it would nevertheless be true that the subject is described in the title.

113 Ala. 1. 81 Am. State Rep., 123.

If an act embraces two or more subjects, and two or more of the same are expressed in the title, the whole act is void.

Vol. 1, Suth. Stat. Con., page 250: 75 Ala., 539: 119 Ala., 202: 79 Ky., 13: 104 La., 249: 81 Am. St. Rep., 123: 7 Md., 151: 63 Mich., 568: 17 Neb., 87: 49 N. J., 488: 86 Tenn., 272.

In State vs. Lancaster Co., Justice Maxwell said: "The rule is well settled that where the title to an act actually indicates, and the act itself actually includes, two distinct objects, where the constitution declares it shall embrace but one, the whole act must be treated as void, from the manifest impossibility of choosing between the two and holding the act valid as to one and void as to the other."

Cooley Con. Limita., 147.

Where the provisions of a statute which are connected with its subject are separable, they will be declared void and the remaining sustained.

Cooley's Con. Lim., 181: 50 N. Y., 566: 103 U. S., 477.

The title of an act defines its scope. It can contain no valid provision beyond the range of the subject there stated.

Ib. page 252 and note.

It is therefore evident that the land grant attempted to be made to the Atlantic, Suwannee River & *Gulf Railway* Company by the Act of May 24, 1893, is void, and the complainant claiming title by virtue of said grant, had no legal or equitable right, title or interest in or to the lands described in the Bill at the time of the filing of the same.

This Act also attempts not only to create a new corporation, but to consolidate another corporation with this new corporation, and by Section 18 of said Act, gives

to the said corporation a land grant for the road constructed under the old charter.

Counsel for the Appellant, in their brief, have stated that no part of the road was completed under the original, or "Atlantic, Suwannee River & Gulf Railroad Company," nor any certificates issued therefor, but that all the work was done by the last company.

We submit that the Bill does not so declare. This statute being made a part of the Bill, and counsel relying upon Section 18 specifically in their Bill would imply that *they did claim* a part of these certificates for work done under the old charter. The certificates, of course, if issued at all, were issued to the new company under this new charter, *but for work done under the old charter.*

The title of this Act imports a prospective statute.

> "A title importing a prospective statute will not cover a retrospective provision. An act to prescribe the manner of creating corporations cannot constitutionally embrace provisions amending existing charters."
>
> Suth. on Stat. Constr., Vol. 1, 2nd Ed., page 253.
> Ayerige vs. Town Com'rs. 60 Ga., 405.
> City Council vs. Port Royal, etc., 74 Ga., 658.
> State vs. Schultz Co., 83 Md., 58. 1 vol. Suth.

When the title purports to relate to a *newly incorporated* company, provisions relating to prior companies are void.

> State vs. Schultz Co., 83 Md., 58. 1 vol. Suth. Stat. Con. page 264, Note 35.

The complainant, of course, contends that the bill duly and legally was passed by the Legislature by its longer title, *viz:* "An Act to Incorporate the Atlantic,

Suwannee River & Gulf Railway Company, to grant to such Corporation certain Privileges, and to aid the Construction thereof," and realizing that the shorter title above recited is not sufficiently broad to include the grant of lands, the complainant makes a strenuous effort in his bill to introduce allegations tending to show that the bill was legally passed by its longer title. These contentions we answer in arguing the 18th point of our demurrer hereafter. We assume for the purpose of argument, that our contention that the bill was passed only by its shorter title, is proved, and starting from that as a basis, we now propose to adduce some authorities to show that the bill by its shorter title is not sufficiently broad to include land grants, and that the Sections of said Act, under which complainant claims, numbered 9, 10 and 18, relating to land grants, are unconstitutional and void.

Section 16, Art. III, of the Constitution of Florida provides that each law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, *which subject shall be briefly expressed in the title.*

The subject of this Act, as expressed in its title, is to "Incorporate the Atlantic, Suwannee River & Gulf Railway Company."

But the granting of title to lands is not a matter properly connected with the subject of the creation of a corporation in a legislative enactment. A land grant from the State requires an act of the Legislature, and in the nature of the things cannot be a matter germane to, or properly connected with, a subject of statutory incorporation.

Carr vs. Thomas, 18 Fla., 736 and 747.

Ex parte Wells, 21 Fla., 280.
State ex rel. County Commissioners, 23 Fla., 483.
State ex rel. vs. Knowles, 16 Fla., 577.
Schiller vs. State, 38 So. Rep., 706.
36 Fla., 196, 224.

In the case of *Wade vs. The Atlantic Lumber Company,* 51 *Fla.,* 633, the learned Justice of the Supreme Court of the State of Florida, rendering the opinion, construing and considering the provisions of Chapter 4267, Laws of Florida, now under construction in this case, uses this language:

"Is the title of the Act sufficiently broad to embrace such a grant?"

"In other words, does the title 'An Act to Incorporate a Railroad Company,' sufficiently apprise the Legislature and the people, that under such a title a large land grant, hundreds of miles, perhaps, from the proposed line of road will be included thereunder?"

"The cases most in point that are brought to our attention are two from New York, both of which hold that the title to 'incorporate' is too restrictive to permit a loan or grant from the State. *People ex rel. Allen,* 42 *N. Y.,* 404, and *People ex rel. Failing vs. Commissioners of Highways,* 53 *Barb. (N. Y.)* 70. These cases were cited approvingly by us in support of a declaration that a title to an act was too narrow, in *Webster vs. Powell,* 36 *Fla.,* 703, text 718, 18 So. Rep. 441. See also *Case vs. Loftus,* 43 Fed. Rep., 839."

"Counsel for appellee disclaim any sinister purpose in those asking the charter, and we freely accord them whatever benefit may come from good motives. The fact remains, however, that the short title to which alone we look is so narrow and so innocent looking, that neither the Legislature nor the

people of Florida were thereby put upon notice that hundreds of thousands of acres of the public domain were being granted away."

And in further discussion of the case, the court used this language:

> "We are unwilling to assert that whenever a railroad asks for articles of incorporation, that the people throughout the State are thereby put upon notice that hidden beneath so simple a request there lurks a grant of lands amounting to a principality, but affirm that when the railroad's only basis for equity is founded upon such esoteric grant, the courts of this State will not aid them. Applying, then, the rules recognized by this and all other courts whose opinions we have examined upon the point of restrictive titles, we hold that the quoted sections nine, ten and eighteen of Chapter 4267 are not included within the title "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railroad Company" and are therefore ineffective and void." Text, 638, 639.

On the petition for rehearing in the above case of Wade vs. Atlantic Lumber Company, the Supreme Court of Florida, in denying said petition, sustained the view expressed, and holds further that parol evidence is not admissible against the affirmative showing of the journals of the Legislature.

2nd Headnote, pg. 638, Vol. 51, Fla.

18TH GROUND OF DEMURRER.

This ground of demurrer, upon which these defendants particularly rely, is as follows:

> "That Chapter 4267, referred to in complainant's bill, as bearing the title "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Com-

pany, and to Grant to said Corporation certain Privileges to aid the Construction thereof," is void, for the reason that it is not shown affirmatively by the journals of the Legislature of the State of Florida, nor so alleged in the complainant's bill, that said Chapter 4267 was passed by the Legislature in conformity with the constitutional requirements of the State of Florida."

This case has been carried already through the State courts of the State of Florida, and has been decided adversely to the complainant's contentions, upon the very point above raised, and this present suit is in effect an attempt to appeal from the decision of the Supreme Court of the State of Florida, to the Federal courts.

About the year 1903, the Atlantic Lumber Company, one of the predecessors in interest of the complainant, filed its bill in equity in the Circuit Court of the Second Judicial Circuit of Florida, in and for Taylor County, against Neill G. Wade, one of the defendants in the present suit, praying for substantially the same relief sought by the present bill. The defendant demurred, and the demurrer being overruled, appealed to the Supreme Court of Florida, which court at its January term, 1906, rendered a decision reversing the lower court, and sustaining the demurrer, upon the sole ground above stated.

The Supreme Court of Florida held, that the journals of the House of Representatives, and of the Senate of Florida are conclusive evidence of the actual title of the Act, Chapter 4267, at the time of its passage by the Legislature, and that that title was a shorter and different title than the title under which it was afterwards approved by the Governor; and therefore that the additional portion of the title of the bill, was not passed by the Legislature

at all, in accordance with the requirements laid down in the Constitution of the State of Florida, and is not law.

The constitutional provision to which the Supreme Court refers, is Section 16, Article III, of the Constitution of the State of Florida, which is as follows:

> "SECTION 16. Each law enacted in the Legislature shall embrace but one single subject, and matter properly connected therewith, which subject shall be briefly expressed in the title."

The Supreme Court say in part, in their opinion:

> "Is the title of the Act sufficiently broad to embrace such a grant? As printed, Chapter 4267 bears the title 'An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company, to Grant said Corporation Certain Privileges and to aid the Construction thereof.' The journals of the two houses of the Legislature disclose, however, that the bill which was voted on by them bore at its passage the title merely, 'A Bill to be entitled An Act to Incorporate the Atlantic, Suwannee River & Gulf Railroad Company,' and was designated further as House Bill 99. * * * This court is firmly committed to the holding that when the journals speak, they control, and as against such proof, the enrolled bill is not conclusive. We are further committed to the proposition that a material change in the title to a bill as signed by the presiding officers of the Legislature and as signed by the Governor is fatal."

The court therefore held, that the journals of the house and of the Senate, both of which showed that the title of the bill as introduced and passed by them was merely "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railroad Company," are conclusive evidence of the real title of the bill, and that the fact that

the bill, as engrossed, enrolled and signed by the presiding officers of both branches of the Legislature, and by the Governor, bore the longer and broader title, does not in the least operate to constitute such longer title the true and legal title of the bill.

In support of its position on this point, the court cite many earlier cases decided by the Supreme Court of Florida, which uniformly hold that the journals are the conclusive evidence and test of the true title of a bill.

And so well settled and thoroughly established is the precedent above set forth, that in the case of *Wade vs. The Atlantic Lumber Company,* 51 Fla. above cited, at page 633, the court remarks that counsel for the Atlantic Lumber Company conceded the point, and perhaps for that reason, the court did not deem it necessary to dwell upon it at length. The Court says:

> "Under such precedents, the counsel for the appellee were justified in conceding that they were bound by the original title (of the Act of the Legislature), and contended only that the change was not material, and that the short title was sufficient to comply with the constitutional command 'each law enacted in the legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title.' "

Counsel for complainant makes a strenuous attempt, in the present bill of complaint, to evade the point, and to deny the binding force of the journal entries of the legislature. Yet it plainly appears from the pleadings, that the title of the Act, as it appears on the journals of both Houses, up to and after the time of its final reading and passage, was the short and abbreviated title only.

At Section XXV of the bill of complaint, it is alleged:

> "That through inadvertence, accident, mistake or want of judgment on the part of the recording clerks of the house or senate, or other state official having the matter in charge, an abbreviated title, reading 'A Bill to be entitled an Act to incorporate the Atlantic, Suwannee River & Gulf Railroad Company, being House Bill No. 99,' was indorsed, before or at the time of its introduction, upon the *back* of the said bill, which was entitled on the inside, and as a part of said bill, 'An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company, to Grant to said Corporation Certain Privileges, and to Aid the Construction thereof,' which abbreviated title and number were used and employed to identify said bill, through all the steps or stages of its passage, in the rough and hasty entries made in the minutes of both branches of the Legislature, by the recording clerks thereof, until the enrolled copy of the bill, upon which there was no number or abbreviated title endorsed, was reported back to both branches of the Legislature by the joint committee on enrollment, when, at which point, and thereafter, the full, true, correct, perfect and inside title was used or employed by the recording clerks of both branches of the Legislature in the entries made by them on the respective minutes." (Rec., p. 25.)

Precisely. And those "rough and hasty entries made in the minutes of both branches of the Legislature by the recording clerks thereof," are the very journal entries referred to by the Supreme Court of Florida, and held by it in case after case, and precedent after precedent, to be the sole and conclusive evidence of what was the real title of a legislative Act, at the time of its introduction and passage by both Houses of the Legislature. There were no other journals kept of the proceedings, other

than these rough and hasty entries made on the minutes by the recording clerks, and it is beside the point to argue that they were imperfectly written, unverified and unauthenticated and utterly worthless and unreliable. The point is, that the Supreme Court of the State of Florida has adjudged differently, and in many a case, decided *long before* the Act in question was introduced in the Legislature by its sponsors, had decided that the title of an Act, as it appears on the journals of the Legislature, is of higher dignity than the title that appears on the engrossed and enrolled bill. Under these circumstances, it was the duty of the introducers of the bill to see that its proper title was entered on the journals of the Legislature, during the time that it was under consideration and deliberation, and since they negligently failed to observe and follow the constitutional requirements necessary for the passage of a valid Act, they have only themselves to blame for the invalidity of the Act in question.

As the Supreme Court remarked in *State ex rel. Attorney General vs. Green,* cited above:

> "The inconvenience and danger resulting incidentally from the rule that the journals when clear and explicit as to the matters proper to be incorporated therein will control, can be guarded against by a proper observance of the prescribed procedure, and diligent attention to the making and preservation of the requisite journal evidence."

What is the reason for this rule announced by the Supreme Court, that the title of an Act as it appears on the journals of the House, is of superior dignity to the title which appears on the duly enrolled bill, bearing the official signatures of the Governor and presiding officers?

The reason assigned by the Supreme Court, is that the title of the bill as it appears upon the journals, is all that is read to the Legislature, at least upon its first and second readings, and that the members of the Legislature, knowing as they do that a provision in the Constitution requires the entire subject matter of a bill to be expressed in its title, are naturally guided by that title as announced, in their attitude toward a proposed bill. The Court says:

> "The fact remains, however, that the short title to which alone we look, is so narrow and so innocent looking, that neither the legislators nor the people of Florida were thereby put upon notice that hundreds of thousands of acres of the public domain were thereby being granted away. Under our constitution, as amended, bills may be read by their title only upon the first and second readings, and must be read by sections only upon their final passage, and the journals almost never contain any part of the bill, except its title and certain proffered amendments, nor do the newspapers as a rule publish more than the titles. It is of importance, therefore, that these titles be not misleading and lull into indifference the members of the Legislature and the people of the State. With such a restriction in the constitution, a legislator may excuse himself from a critical analysis of a bill upon which he is to vote, and it may perhaps be said that the legislative mind is not fully directed towards specific provisions of a bill, but only to the general outline thereof as disclosed by the title."
>
> 51 Fla. Text, 636.

Next, counsel for complainant introduces allegations into the bill of complaint, tending to show, that the bill was examined by the joint committee on enrollment, and upon such examination found by that body to be a full, true, correct and perfect copy of the engrossed bill, both

as to the title and body thereof, and reported back by such committee in the exact form as to title, body, form and substance, as subsequently signed by the presiding officers of the Legislature, and by the Governor, etc.

These allegations have been fully met by the decisions of the Supreme Court of Florida already quoted. The complainant advanced similar contentions, in its petition for rehearing, in the same case of *Wade vs. Atlantic Lumber Company,* 51 Fla., 638.

The Court, in passing upon them, said:

> "It was not, however, the concession of counsel that rendered the grant unconstitutional and void, nor did such concession operate upon the minds of the Court in so holding; but the fact disclosed affirmatively by the Journals of the Legislature, that the title of the Act, *as it passed* the two houses, and was voted on by the Legislature, was too restrictive to apprise them that such a land grant was being made."

The italics in the above quotations are the Court's. It is of no value whatever to complainant's case, to allege that the bill as reported back by the committee on enrollment contained the true and correct title of the case. The question is, according to the Supreme Court of Florida, what was its title AS IT PASSED AND WAS VOTED ON? The Supreme Court finds, that "the fact is disclosed affirmatively by the journals of the Legislature" that the title of the act *as it passed,* was the short, abbreviated title, and not broad enough to include a grant of lands.

The complainant alleges that prior to the signing of the act in question, each presiding officer caused said bill to be read by its true or inside title, and thereupon the

Legislature offered no amendment to said title, and their failure to change the title upon such amendment was in practice and in law a formal legislative sanction of the title as read. These allegations are worthless for any purpose, because they do not pretend to show that the longer title of the bill was used at any time prior to its final passage. The formal reading of the title of the bill took place after it had been reported back by the committee on enrollment. The bill had long since passed on its third reading, at which time it was known only by its shorter title. That was the point at which the title of the bill was all-important. The formal reading of the title, the signing by the high dignitaries of the State, the enrollment, the printing, publishing and circulating under the authority of the State, all these matters upon which complainant relies, are matters of form and ceremony only; and we are willing to stand upon the allegation of the bill of complainant itself, which admits that the abbreviated title was used in the minutes of both branches of the Legislature, until the enrolled copy of the bill was reported back by the joint committee on enrollment.

Another point upon which complainant seeks to rely, is that the bill as introduced into the Legislature, bore the title, on the inside, and as a part of said bill "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company, to grant to said Corporation certain privileges, and to Aid the Construction thereof," and that the shorter and abbreviated title was indorsed upon the back of the bill, by accident, mistake or inadvertence on the part of the recording clerks of the house or senate, and in that way crept into the minutes of both houses. And as part of this attack on the validity of the journal entries, complainant alleges that they were rough

and hastily, imperfectly written, unverified, unauthenticated, utterly worthless and unreliable.

The Supreme Court of Florida, however, places a different estimate upon the value of the journal entries, and they have overruled this contention so decisively upon the petition for rehearing, that it is only necessary to again quote from their opinion, 51 Fla., page 639:

> "The appellee also asks that the decree be modified to enable the petitioner to show that the title to the bill as actually introduced into the House and at all subsequent stages, was in the form as now published, and that the fact of the shorter form appearing in the journals was due to the mistake or carelessness of the clerks. To grant this request would be to permit uncertain parol evidence to countervail the legislative journals and would produce overwhelmingly uncertainty as to the validity, force or effect of every law upon the statute books; if admitted for the purpose of sustaining an act, it would be equally admissible to overthrow an act, and cannot be permitted."
>
> Hapel vs. Brethhauer, 70 Ill., 166.
> Attorney-General vs. Rice, 64 Mich., 385.
> White vs. Hinton, 3 Wyoming, 753.
> 30 Pacific Rep., 953.
> S. C. 17 L. R. A., 66.
> Common Council City of Detroit vs. Board of Assessors of City of Detroit, 91 Mich., 78.
> 51 N. W. Rep., 787.
> S. C. 16 L. R. A., 59.

RESULT OF SUIT IN STATE COURTS.

After finding that the shorter title of the bill must be accepted as conclusive, the Supreme Court of Florida proceeded to hold, that such shorter title was not sufficiently broad to include a grant of lands; that therefore

Sections 9, 10 and 18, of the alleged Act of the Legislature of May 24, 1893, under which the complainant complains, were not passed by the Legislature in accordance with the constitutional requirements, and are void and of no effect, without impairing the force and validity of the remainder of said Act; and that the complainant was not entitled to the lands claimed by virtue of the aforesaid Act; the demurrer to the bill of complaint was sustained, and the bill *ordered dismissed*, in the opinion of the Supreme Court, and thus the suit ended adversely to the predecessor of the complainant.

THE DECISION OF THE SUPREME COURT UPON THE CONSTRUCTION OF A STATE STATUTE IS BINDING UPON THE FEDERAL COURTS.

> "The construction of a state statute by state supreme court, involving no question under federal laws or constitution, is conclusive upon federal supreme court."
>
> Tioga Ry. Co. vs. Blossburg Ry. Co., 20 Wall., 143.
>
> Erie Ry. vs. Pennsylvania, 21 Wall., 497.
>
> State Railroad Tax cases, 92 U. S., 704.
>
> Hagar vs. Reclamation Dist. Ill., U. S., 704.
>
> Texas Ry. vs. Johnson, 151 U. S., 99.

No principle of law is more firmly established than this . "The construction of the highest state court, of state constitution and laws, will be followed by Supreme Court, although it has previously construed the same differently."

Fairfield vs. County of Gallatin, 100 U. S., 52.

"The Supreme Court must accept as conclusive the decision of state supreme court as to validity of statute."

Mason vs. Missouri, 179 U. S., 34.
Wiley vs. Sinkler, 179 U. S., 66.
Williams vs. Eggleston, 170 U. S., 311.
McCain vs. DesMoines, 174 U. S., 177.
Orr vs. Gilman, 183 U. S., 283.
Noble vs. Mitchell, 164 U. S., 372.

"In deciding whether a state act is a violation of the state constitution or not, the courts must be guided by the decisions of the highest state court, upon the construction of the act, and whether as so constructed, it violates the state constitution."

Fallbrook vs. Bradley, 164 U. S., 154.
Montana Co. vs. St. Louis, 152 U. S., 165.

"The question of constitutionality of state statute belongs to highest state courts, and federal courts will, where possible, avoid deciding in advance of it."

Pelton vs. National Bank, 101 U. S., 144.

"The decisions of highest state court construing state constitution or statute, are to be considered at law of state within meaning of Revised Statutes, 721, providing that federal court sitting in states shall regard laws thereof as rules of decision."

Bucher vs. Cheshire R. R., 125 U. S., 583.

"Federal Courts follow state decisions on construction of state constitution and laws."

Gormly vs. Clark, 134 U. S., 348.
Stutsman County vs. Wallace, 142 U. S., 306.

In the case of *Castillo vs. McConnico, 168 U. S., 674,* the Supreme Court said:

"To determine the existence of due process of law [under the 14th Amendment] is the final province of this court, whilst the ascertainment of the other, that is, *what is merely essential under the State statute, is a state question within the final jurisdiction of the courts of last resort of the several States.* When, then, a State court decides that a *particular formality was or was not essential under the State statute,* such decision presents no Federal question, providing always the statute as thus construed does not violate the Constitution of the United States, by depriving of property without due process of law. This paramount requirement being fulfilled, as to other matters the state interpretation of its own law is controlling and decisive. This distinction is pointed out by the decisions of this court."

Pittsburg Ry. Co. vs. Backus, 154 U. S., 421.
Kentucky R. R. Tax Cases, 115 U. S., 322.
Davidson vs. New Orleans, 96 U. S., 97.

This reasoning seems to be very applicable to the case at bar. Here we have a case in which the State constitution prescribed particular formalities or requirements to be observed in the enactment of laws by the legislature. Prior to the enactment of the land grant act under which complainant claims, these formal requirements of our Constitution had been fully interpreted by our Supreme Court, in no less than three adjudicated cases. Subsequent to the enactment of complainant's land grant, our Supreme Court has held, in line with its previous rulings, that the constitutional requirements have not been complied with in its passage. And such decisions are binding upon the Federal Courts.

164 U. S., 372.

DOCTRINE OF FLORIDA COURTS WAS ANNOUNCED LONG PRIOR TO THE ENACTMENT OF COMPLAINANT'S LAND GRANT.

The complainant may claim here that the decision of the state court as to the constitutionality of this statute is not binding upon the federal court, because it in effect created a contract between the State and private individuals, and the interpretation and validity of the statute is drawn in question under the clause in the Federal constitution, which provides that no state may pass a law impairing the obligation of contracts.

It is sufficient to say, in answer to this point, that it might have force, if the decision of the Supreme Court, that the minutes or journals of the Legislature, were of superior dignity to the title of an Act, as it appeared in the engrossed or enrolled bill, or elsewhere, was a new and novel construction of the constitutional requirements, adopted by that court for the first time after the passage of the Act upon which complainant relies. But in fact, that doctrine had been unequivocally announced by the Supreme Court in three adjudged cases, prior to the passage of said Act relied on by complainant, and whether the Court follows the decision of the State Court in this particular case or not, it is equally and undoubtedly bound to follow the decisions and general principles laid down by the Supreme Court in these earlier cases, which declare the journal entries to be the only and conclusive evidence of the title of an act, and which are as fatal to the complainant's bill as the decision in this particular case.

Thus in *State of Fla., ex rel. Brown,* 20 Fla., 407, decided in 1884, the syllabus of the case reads:

"In testing the question whether an act of the legislature was passed in conformity to the requirements of the Constitution, the journals of the houses of the Legislature will be examined; and if the journals furnish conclusive evidence that any bill was not passed in a constitutional manner, it cannot be recognized as a law."

And in *State of Fla. vs. Deal,* 24 Fla., 293, decided in 1888, the court held that the journals are conclusive evidence of the contents of a bill at the time of its passage.

The Court said:

"Considering the bill as a whole, though it has the sanction of the Governor, and is certified to by the officers of the two houses, yet as is conclusively shown by the journals, it has never been adopted by the two houses referred to."

Text, 294.

"The bill was never enrolled as it passed; but in making what was intended to be an enrolled copy, to be signed by the presiding officers of the houses, and to be presented to the Governor, the proviso was also enrolled as a part of the bill, and in this shape it was signed by the Speaker of the House, and President of the Senate, and approved by the Governor."

Text, 295.

"Nothing could be plainer than that the Governor had acted on and approved a bill whose provisions were in legal effect one thing, whereas the bill which had passed the two houses of the Legislature was entirely different in its legal effect, or as was stated by the Supreme Court of Alabama, the bill which was signed by the officers of the two houses and approved by the Governor "was not the bill which had been passed by the two houses."

Text, 296.

And at the January Term, 1893, only two months before the passage of complainant's alleged Act, our Supreme Court had re-affirmed these principles in the case of Mathis vs. State of Florida.

31 Fla., text 303, 304.

Our Supreme Court, therefore had clearly construed and interpreted the constitutional requirements necessary to be observed in the passage of an act of the Legislature, long before the complainant's Act was passed; and complainant cannot claim that by a law enacted since the passage of its Act, or by a decision construing our laws, that the State of Florida has sought to deprive it of its vested rights or impair the obligation of an act amounting to a contract.

REPLY TO APPELLANT'S POSITION.

In the Circuit Court of Appeals, counsel for the appellant argued three propositions, viz:

FIRST POINT.

"This case is not res judicata because of the former ruling of the state court."

In support of this position, appellant's counsel argued in their brief, that material allegations appear in this suit that did not appear in the former suit.

An examination of the opinion of the Florida Supreme Court will disclose the contrary of this contention to be the truth, and that the Florida court did consider all the allegations and facts presented in the present suit. The present suit, as stated by appellant in its brief, sets up in great detail what appellant asserts are the actual facts in regard to the introduction and passage

of the act in question, alleging that the bill as introduced had the full title as published, and that the more abbreviated title stated in the journal was simply indorsed on the outside of the bill as a convenient memorandum for identification and reference. The facts upon which these allegations are based, however, were before the Florida Court, for that Court, following the uniform practice in Florida, took judicial notice of the contents of the journals of the Legislature upon appeal, although the contents of such journals were not alleged in such great detail in the pleadings. This has always been the rule in Florida. Thus it was said in *State of Florida ex rel. vs. Brown,* 20 Fla. Rep., 407:

"In testing the question whether an act of the Legislature was passed in conformity to the requirements of the Constitution, the journals of the Houses of the Legislature will be examined; and if the journals furnish conclusive evidence that any bill was not passed in a constitutional manner, it cannot be recognized as a law."

Accordingly, when this case was heard before the Florida Supreme Court, it examined the journals of the Legislature. Upon the petition for rehearing, the appellee (predecessor of the present appellant) "asks that the decree be modified to enable the petitioner to show that the title to the bill as actually introduced into the House and at all subsequent stages was in the form as now published, and that the fact of the shorter form appearing in the journals was due to the mistake or carelessness of the clerks."

Wade vs. Atlantic Lumber Company, Petition for Rehearing, 51 Fla., 639.

The allegations and contentions made before the Florida court are therefore identical with those made in the present suit; and the Florida court, in examining the journals of the legislature, had all the evidence before it in regard to the title, contents and career of the bill, that can be adduced in the present suit. We insist, therefore, that the parties to the suit in the Florida courts, and their present successors in title, are conclusively bound by the decree of the State court.

SECOND POINT.

The second point upon which appellant insisted in the Court of Appeals, is that this court is not bound by the finding of the Florida Supreme Court, as to the fact of the enactment of the state statute.

In the case of *South Ottawa vs. Perkins,* 94 U. S., 260, this Court said:

> "It would be a very unseemly state of things after the courts of Illinois had determined that a pretended statute of that State is not such, never having been constitutionally passed, for the courts of the United States, with the same evidence before them, to hold otherwise."

Appellant insists, that it has introduced new evidence in this cause, viz: the actual facts regarding the title of the bill as introduced and passed. It thus becomes of great importance to consider whether or not this is really new evidence. It is true these detailed allegations were not contained in the pleadings in the former case, but the facts were and adjudicated. All this evidence was before the Florida court, because it is nothing more nor less than the contents of the journals, which, as previously

pointed out, the Florida court considered fully on appeal, though not produced nor made a part of the case in the court below.

The same state of facts being here presented as was considered by the state court, the decision of the latter court that the pretended statute was not in fact enacted, is binding upon this court. See:

Wilkes County Commissioners vs. Coler, 180 U. S., 506, in which the Court quoted with approval the following language from the opinion in *South Ottawa vs. Perkins:*

> "As a matter of propriety and right, the decision of the state courts on the question as to what are the laws of the state, is binding upon those of the United States. But the law under consideration has been passed upon by the Supreme Court of Illinois, and held to be invalid. This ought to have been sufficient to have governed the action of the court below. In our judgment, it was not necessary to have raised an issue on the subject, except by demurrer to the declaration. The court is bound to know the law, without taking the advice of a jury on the subject. When once it became the settled construction of the Constitution of Illinois that no act can be deemed a valid law unless, by the journals of the legislature, it appears to have been regularly passed by both houses, it became the duty of the courts to take judicial notice of the journal entries in that regard. The courts of Illinois may decline to take that trouble, unless parties bring the matter to their attention; but, on general principles, the question as to the existence of a law is a judicial one, and must be so regarded by the courts of the United States."

This decision is exactly applicable to the case at bar, since it has always been the settled doctrine of the

Supreme Court of Florida, in construing our State Constitution, that the journal entries are controlling on the question of whether or not an act has been regularly passed. Our Supreme Court has in the present case, following its uniform practice, taken judicial notice of the journal entries, and has found therefrom that those portions of the appellant's act which purport to contain a grant of lands, were not passed in accordance with the constitutional requirements and were never legally enacted.

THIRD POINT.

The third point upon which the appellant has insisted, is that, not only is the decision of the state court not binding upon the Federal courts, but also, that the rule which our Florida courts have uniformly followed, to-wit, that the journal entries are conclusive as to whether the constitutional requirements have been observed in the passage of an act, should be disregarded and reversed by this court in the decision of this case, and the opposite rule applied.

In the case of *Wilkes vs. Coler, 180 U. S.*, supra, the court remarked:

> "It is true that in State ex rel. Scarborough vs. Robinson, there are general expressions touching questions adverted to but not decided, that lend apparent support to the contention that the North Carolina decisions rendered *after* the issuing of the bonds in suit were not, in all particulars, in harmony with what was said by the state court in *prior* cases."
> Text, 519.

The court intimates by this quoted language, that a State Supreme Court will not be allowed to change its

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interpretation of what constitutes a compliance with constitutional requirements for the enactment of an act, *after* the enactment of he act and after vested rights have accrued thereunder. In the case at bar, the principle that the journal entries are conclusive, was announced not after, but long *prior* to, and uniformly and in several decisions before the enactment of the appellant's act.

State ex rel. vs. Brown, 20 Fla., 407, (decided 1884.)

State ex rel. Boyd vs. Deal, 24 Fla., 293, (decided 1888.)

Mathis vs. State of Florida, 31 Fla., 291, (decided at the January Term, 1893.)

The act under which the appellant claims its land grant was enacted on *May 24th, 1893,* Chapter 4267, Laws of Florida, and therefore *subsequent* to these decisions of the Florida courts adopting the rule that the journal entries are controlling. Thus, even if this court declined to be bound by the finding of the Florida court as to the non-enactment of the complainant's land grant, it is most unquestionably and undoubtedly bound to follow the interpretation which the Florida Supreme Court had long since placed upon the provisions of the state constitution, which interpretation was part of the law of Florida at the date of the enactment of the appellant's pretended land grant, and as such, controlling upon the appellant, and binding upon the Federal courts. For, as this court has said:

> "The decisions of highest state courts construing state constitution or statute, are to be considered as law of state within the meaning of Revised Statutes, 721, providing that federal court sitting in states shall regard laws thereof as rules of decision."
>
> Bucher vs. Cheshire R. R., 125 U. S., 583.

The appellant, in contending that to uphold the rule that the journal entries are conclusive would be to deprive the appellant of its property without due process of law, in the language of this court:

> "Asks this court to wrest from the judicial tribunals of the states, the right of expounding the statutes of their own legislatures—to do what Mr. Chief Justice Marshall says 'no court in the universe, which professed to be governed by principle, would undertake to do'—erect itself into a tribunal to correct the alleged misinterpretations of their own statutes by the judiciary of the states."
>
> Commercial Bank vs. Buckingham, 5 Howard, 317.

Appellant contends that the silence of the journals is not affirmative evidence. That is not the point here, for the journals are not silent; they show affirmatively that the title of the act as passed was not the same as the enrolled bill. The Florida court so found:

> "This court is firmly committed to the holding that when the journals speak, they control, and as against such proof the enrolled bill is not conclusive."
>
> Wade vs. Atlantic Lumber Co., 51 Fla., text, 633.

> "The fact is disclosed *affirmatively* by the journals of the legislature, that the title of the act, *as it passed* the two houses and was voted on by the legislators, was too restrictive to apprise them that such a land grant was being made."
>
> Wade vs. Atlantic Lumber Co., 51 Fla., text, 639.

ESTOPPEL.

Appellant in his brief lays much stress on the question of estoppel. There can be no estoppel in this case. In

the case of South Ottawa vs. Perkins, quoted with approval in Wilkes County vs. Coler, supra, this court was considering the case of a bona fide purchaser for value of a municipal bond. The town sued had paid the first instalment of interest, and it was contended that it was estopped from offering any evidence that the act was not legally passed, the same having been duly published among the printed statutes as a law. The court said:

> "We cannot assent to this view. There can be no estoppel in the way of ascertaining the existence of a law. * * * The doctrine of estoppel is totally inadmissible in the case."

Appellant argues that the State of Florida has not complained, and is not now complaining, in either its sovereign or its corporate capacity, and that by its silence it raises no objection to a conveyance of the legal title to the lands to appellant. This is easily answered by the principle that the Trustees in defending the interests of the equitable owner of the lands, viz: the State, may insist upon all defenses to which the State is equitably entitled.

Appellant insists that it has a contract with the Trustees of the Internal Improvement Fund, which they are estopped to deny. An examination of the certificate issued by the Trustees (page 17, appellant's brief), shows that under it the Trustees contract and agree to nothing; it merely recites that certain formal duties imposed by the act under which appellant claims upon the Trustees, have been performed; viz: that five miles of railroad have been inspected by the State engineer, and that appellant is entitled to locate 12,500 acres of land. The certificate recites that it is made pursuant the act under which appellant claims. If that act was void, appellant

could gain no new rights by the inspection of its line of road, and certificate by the State officials.

Appellant's right to the lands, and to receive a deed thereof, depended solely upon the act of the Legislature of Florida, Chapter 4267, which the Florida Supreme Court held to be void so far as said land grant was concerned.

Wade vs. Atlantic Lumber Co., 51 Fla., 628.

The appellees respectfully contend, that the decisions of the Florida Supreme Court should be followed, and the decree of the Circuit Court sustaining the demurrer and dismissing the bill, should be affirmed.

W. S. JENNINGS,
Solicitor for the Trustees of the
Internal Improvement Fund,
Appellees.

APPENDIX.

SWAMP LAND GRANT ACT.

"AN ACT TO ENABLE THE STATE OF ARKANSAS AND OTHER STATES TO RECLAIM THE SWAMP LANDS WITHIN THEIR LIMITS."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State.

SEC. 2. And be it further enacted, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and, at the request of said Governor, cause a patent to be issued to the State therefor; and, on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the Legislature thereof; Provided, however, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. And be it further enacted, That in making out a list and plats of the land aforesaid, all legal sub-

divisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a sub-division is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. And be it further enacted, That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

Approved, September 28th, 1850.
United States Statutes at Large, Vol. 9, p. 519.

LAWS OF FLORIDA.

CHAPTER 610.

AN ACT TO PROVIDE FOR AND ENCOURAGE A LIBERAL SYSTEM OF INTERNAL IMPROVEMENTS IN THIS STATE.

WHEREAS, the Constitution of this State declares "that a liberal system of internal improvements, being essential to the development of the resources of the country, shall be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law proper objects of improvement in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements," therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened,*

That so much of the five hundred thousand acres of land granted to this State for Internal Improvement purposes, by an act of Congress, passed the third day of

March, 1845, as remains unsold, and the proceeds of the sales of such of said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the swamp land or lands subject to overflow, granted to this State by an act of Congress, approved September 28, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the State from the sale of said lands, are hereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this act.

SEC. 2. *Be it further enacted*, That for the purpose of assuring a proper application of said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selections, management and sale, are hereby irrevocably vested in five Trustees, to-wit: In the Governor of this State, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General, and the Register of Public Lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time," etc.

SEC. 16. *Be it further enacted*, That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the public lands included in the trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and make such arrangements for the drainage of the swamp and overflowed lands, as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of said lands by allowing preemptions under such rules and regulations as they may deem advisable: *Provided*, That in no case shall a pre-

emption for more than one section of land be granted to any one settler.

Approved, January 6th, 1855.

The above sections were re-enacted as Sections 428, 429 and 432, of the Revised Statutes of Florida, of 1892.

CHAPTER 3326, LAWS OF FLORIDA.

SECTION 440, REVISED STATUTES.

440. *Grants Subject to Trusts.*—Any and all grants of lands other than the alternate sections within the usual six mile limit made or that may be made by any act, shall be subject to the rights of all creditors of the Internal Improvement Fund, and to the trusts to which said fund is applicable and subject under the act approved January 6, 1855, and entitled "An Act to provide for and encourage a liberal system of internal improvements in this State," and subject to control, management and sale and application of said fund and the lands constituting the same, by the Trustees of the Internal Improvement Fund, for the purposes of said trusts under said act.

EXTRACT.

From the Proclamation of the Governor,

Publishing the Revised Statutes.

I, Francis P. Fleming, Governor of the State of Florida, by virtue of the authority vested in me by law, do hereby announce, publish and proclaim, that the Revised Statutes of the State of Florida shall go into effect and be operative on the thirtieth day after the date of this proclamation. Dated 14th day of May, 1892.

The above Section 440, of the Revised Statutes, was therefore in full force and effect, and applicable to the complainant's Act, at the date of its enactment, on May 24th, 1893.

Section 440, Revised Statutes, was also incorporated into the General Statutes of 1906, Section 628, and is now in full force and effect.

INTERNAL IMPROVEMENT ACT.

LAWS OF THE STATE OF FLORIDA.

Passed at the Seventh Session of the General Assembly, 1854-'5.

James E. Broome, Governor; F. L. Villepigue, Secretary of State; T. W. Brevard, Comptroller of Public Accounts; Charles H. Austin, State Treasurer; M. D. Papy, Attorney-General; H. V. Snell, President of Senate; D. G. Livingston, Secretary of the Senate; W. F. Russell, Speaker of the House; Hugh A. Corley, Clerk of the House.

CHAPTER 610.—[No. 1.]

AN ACT to provide for and encourage a liberal system of Internal Improvements in this State.

WHEREAS, The Constitution of this State declares "that a liberal system of Internal Improvements, being essential to the development of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvements in relation to *Roads*, Canals and Navigable Streams, and to provide for a suitable application of

such funds as may be appropriated for such Improvements," therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened,* That so much of the Five Hundred Thousand Acres of Land granted to this State for Internal Improvement purposes, by an Act of Congress, passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such of said lands heretobefore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the Swamp land or lands subject to overflow, granted to this State by an Act of Congress, approved September 28th, A. D. 1850, together with all the proceeds that have accrued, or may hereafter accrue to the State from the sale of said lands, are hereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this Act.

SEC. 2. *Be it further enacted,* That for the purpose of assuring a proper application of the said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five Trustees, to-wit: in the Governor of this State, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General and the Register of State Lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers, and receive payment for the same, and invest the surplus moneys arising thereform, from time to time, in Stocks of the United States, Stocks of the several States, or the Internal Improvement Bonds issued under the provisions of this Act, and drawing not less than six per cent. annual interest; also, the surplus interest accruing from such investments,

and to pay out of said fund agreeably to the provisions of this Act, the interest, from time to time, as it may become due on the bonds to be isued by the different Railroad Companies under authority of this Act; also, to receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of Railroad is completed) on the entire amount of the bonds issued by said Railroad Company, and invest the same in stocks of the United States, or State securities, or in said Trustees shall also invest the surplus interest of said sinking fund investment as it may accrue. Said Trustees shall also demand and receive from each Railroad Company named in this Act, the amount due to the Internal Improvement Fund from said Railroad Company, according to the provisions herein contained, on account of interest on the Bonds issued by said Company, and refusal or neglect on the part of the President and Directors of any Railroad Company herein named to comply with the provisions of this Act, as to the payment to said Trustees of the amount due and payable to the fund, as provided in sections eleven, twelve and thirteen, on account of interet and sinking fund, the individual property of each and all the Directors, shall be liable in an action of debt to said trustees for the amount due and unpaid, with 20 per cent, interest until paid.

Sec. 3. *Be it further enacted,* That all Bonds issued by any Railroad Company under the provisions of this Act, shall be recorded in the Comptroller's office and so certified by the Comptroller, and shall be countersigned by the State Treasurer, and shall contain a Certificate on the part of the Trustees of the Internal Improvement Fund that said Bonds are issued agreeably to the provisions of this Act, and that the Internal Improvement Fund, for which they are Trustees, is pledged to pay the interest as it may become due in said Bonds. All Bonds issued by any Railroad Company under the provisions of this Act, shall be a first lien or mortgage on the road bed, iron, equipment, work-shops, depots and franchise;

and upon a failure on the part of any Railroad Company accepting the provisions of this Act, to provide the interest as herein provided on the Bonds issued by said Company, and the sum of one per cent. per annum, as a sinking fund, as herein provided, it shall be the duty of the Trustees, after the expiration of thirty days from said default or refusal, to take possession of said Railroad Company and all its property of every kind, and advertise the same for sale at public auction to the highest bidder, either for cash or additional approved security, as they may think most advantageous for the interest of the Internal Improvement Fund and the bond holders. The proceeds arising from such sale shall be applied by said Trustees, to the purchase and cancelling of the outstanding bonds issued by said defaulting Company, or incorporated with the sinking fund, until all the outstanding bonds are discharged, under the penalty of an annullment of the contract of purchase, and the forfeiture of the purchase money paid in.

SEC. 4. *Be it further enacted,* That a line of Railroad from the St. Johns River, at Jacksonville, and the waters of Pensacola Bay, with an extension from suitable points on said line to St. Marks River, or Crooked River, at White Bluff on Apalachicola Bay, in Middle Florida, and to the waters of St. Andrews Bay, in West Florida, and a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida; also a Canal from the waters of St. Johns River on Lake Harney to the waters of Indian River, are improvements to be aided from the Internal Improvement Fund, in manner as hereinafter provided.

SEC. 5. *Be it further enacted,* That the several Railroads now organized or chartered by the Legislature, or that may hereafter be chartered, any portion of whose routes are authorized by their different charters, and amendment thereto, shall be within the line or routes laid down in section four (4) shall have the right and

privilege of constructing that part of the line embraced by their charter, on giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this Act, specifying the part of the route they propose to construct; and upon the refusal or neglect of any Railroad Company, now organized to accept, within six months from the passage of this Act, the provisions of the same, any other Company, duly authorized by law, may undertake the construction of such part of the line as they may desire to make, and which may not be in progress of construction under a previous charter.

Sc. 6. *Be it further enacted,* That before any Railroad Company shall be entitled to the provisions of this Act, said Railroad Company shall first grade continuously, twenty miles according to the following specifications:

First.—The line of Road for sixty feet from the center shall be cleared of all standing timber.

Second.—The grading shall be for a single track except at depots, turnouts and similar places, where it shall be wider if required by the State Engineer, with a road bed twenty feet wide in cuttings, with ditches from two to three and a half feet in depth below grade, with such widths as the State Engineer may direct, and eighteen feet wide on embankments, at the grade line, with slope of one and a half feet base to one foot rise; and in all excavations and embankments, they shall be so constructed as to have a perfect drainage, and not permit any standing water to come within three feet of the lower side of the cross ties.

Third.—All the cross ties shall be delivered on the line of the Road and be of heart yellow pine, cypress, white, yellow, post, live or spanish oak, white or red cedar, and not less than nine feet long, with not less than nine feet face, and eight inches in thickness, and shall

be well and carefully bedded, and laid within two and a half feet from centre to centre.

Fourth.—At all water ways, sufficient space shall be left for the unobstructed passage of water; and at all points on the line of the Road where side ditches can be cut that will carry off the surface water, they will be constructed by the Company under the direction of the State Engineer.

Fifth.—In the crossing of all streams, the bridges shall be constructed according to plans approved by the State Engineer; and over all streams that are navigated, suitable draws shall be put in to admit the passage of boats or vessels usually navigating the same, to be decided by the State Engineer.

Sixth.—The gauge of the different Railroads shall be uniformly five feet, and connected continuously, so that cars, or trains of cars can pass on all the routes indicated, without changing freight. And it shall be the duty of the different Railroad Companies to adopt a uniform tariff for transportation of passengers and for hauling the freight in the cars of another Company, upon usual and equitable terms, and no discrimination shall be made by one Company against the freight or passengers of another Company.

Seventh.—The iron rail used shall weigh not less than sixty pounds per lineal yard, and shall be of the best quality of iron, and well fastened to the cross ties, with the best quality of spikes and plates.

Eighth.—The entire equipment shall be of the first class and shall at all times be sufficient for the prompt transportation of all the passengers and freight ordinarily offering.

Ninth.—The grade on no portion of the routes indicated by this Act, shall exceed forty-five feet per mile, and no single curve shall exceed three degrees of curva-

ture, or be adopted unless approved by the State Engineer.

SEC. 7. *Be it further enacted,* That after any Railroad Company shall have graded twenty miles of Road bed continuously, and furnished the cross ties agreeably to the specifications of this Act, and shall give notice to the State Engineer, it shall be his duty to examine personally said section of twenty miles, and if, after full examination, he shall approve the construction of said twenty miles, then it shall be his duty to certify the same to the Trustees of the Internal Improvement Fund; and on the completion of the grading and furnishing of the cross ties of each additional ten miles continuously, the State Engineer shall also examine the same, and, if constructed in accordance with the provisions of this Act, shall certify the same to the Trustees of the Internal Improvement Fund.

SEC. 8. *Be it further enacted,* That on the completion of the grading and the furnishing of the cross ties of twenty miles continuously, and every additional ten miles, as provided by this Act, said Railroad Company are hereby authorized to issue Coupon Bonds, having not more than thirty-five years to run, and drawing not more than seven per cent. annual interest, payable semi-annually in the City of New York or Tallahassee, at the option of the purchaser, at the rate of eight thousand dollars per mile for the purchase and delivery of the iron rail, spikes, plates and chairs, and after the rail has been laid down on the line, the additional sum of two thousand dollars per mile, for the purchase of the necessary equipments; and said bonds shall always afterwards constitute and be a first lien or mortgage upon the road bed, iron, equipment, work-shops, deposits and franchise.

SEC. 9. *Be it further enacted,* That it shall be the duty of said Railroad Company to deposit said Bonds with the Comptroller of Public Accounts, to be by him recorded and the record certified on each Bond; and the

State Treasurer shall enter, in a book to be kept for the purpose, the amount of each Bond with the rate of interest, the time it becomes due, and shall countersign the same; and it shall also be the duty of the Trustees of the Internal Improvement Fund, after having received a certificate from the State Engineer that twenty miles, or ten miles, as the case may be, have been graded in all respects agreeably to the specifications of this Act, and deliver them to the said Railroad Company: *Provided,* The President and at least four of the Directors, file with the Trustees of the Internal Improvement Fund a statement under oath that the necessary quantity and quality of iron for said twenty or ten miles as the case may be, has been purchased, and is within the jurisdiction of this State, and paid for, or to be paid for, with said Bonds or their proceeds: Provided further, That before said Trustees shall deliver to said Railroad Company the said Bonds, said Company shall deposit with the Trustees of the Internal Improvement Fund, the first semi-annual instalment of interest on the amount of Bonds certified to by said Trustees, to meet the same when due, (or they shall retain the Coupons for the first semi-annual interest) and shall give to the Trustees of the Internal Improvement Fund a Bond with approved security, that said quantity and quality of iron shall be laid down on the line of their Road within six months after the said Bonds are issued.

Sec. 10. *Be it further enacted,* That any Railroad Company receiving said certified Bonds, shall apply the same or their proceeds to no other purpose than purchasing the iron rail, spikes, plates or equipments; and before any additional Bonds shall be certified by the Trustees of the Internal Improvement Fund, the iron rail shall be laid on that part of the route for which the Bonds were issued, and so on continuously until the line is completed.

Sec. 11. *Be it further enacted,* That it shall be the duty of the President and Directors of every Railroad

Company accepting the provisions of this Act, while the Road is under construction, to report to the Trustees of the Internal Improvement Fund every six months, under the oath of the President and at least two of the Directors, the gross receipts of said Company from the traffic of the Road for the past six months, the cost for transportation and repairs, and the total amount of the net receipts of said Company; and it shall be the duty of the President and Directors to pay to the Trustees of the Internal Improvement Fund fifty per cent. of said net receipts every six months, which sum or sums shall be applied by the Trustees of the Internal Improvement Fund towards the payment of the interest of any Bonds issued by said Company.

Sec. 12. *Be it further enacted,* That every Railroad Company accepting the provisions of this Act shall, after the completion of the Road, pay to the Trustees of the Internal Improvement Fund at least one-half of one per cent. on the amount of indebtedness, or Bond account, every six months, as a sinking fund, to be invested by them in the class of securities named in section two, or to be applied to the purchase of the outstanding Bonds of the Company; but it shall be distinctly understood, that the purchase of said Bonds shall not relieve the Company from paying the interest of the same, they being held by the Trustees as an investment on account of the sinking fund.

Sec. 13. *Be it further enacted,* That if, on completion of any of the Roads indicated in section four, the net earnings should be less than sixty per cent. on the capital stock paid in and bonded debt of said Company, first deducting the one per cent. per annum paid in to the sinking fund, it shall be divided pro rata between the Stock account paid in and bonded debt, and the Internal Improvement Fund shall pay the deficiency due on the account of interest from time to time, as it may fall due. In the event the net earnings are over six per cent. on the Capital Stock paid in and bonded debt and siking fund

of one per cent., then the President and Directors shall first pay into the hands of the Trustees of the Internal Improvement Fund the amount due on the interest account of the bonded debt, in addition to the provisions for the Sinking Fund, every six months.

Sec. 14. *Be it further enacted,* That for all payments made by the Trustees of the Internal Improvement Fund on account of interest for any Railroad Company agreeably to the provisions of this Act, said Trustees shall demand and receive from said Railroad Company equal amounts of the Capital Stock of said Company, which Stock shall entitle the Internal Improvement Fund to all the privileges and advantages of private Stockholders.

Sec. 15. *Be it further enacted,* That on the routes indicated for the construction of the different lines of Railroad, the State hereby grants to each of the different Companies that may hereafter construct portions of such lines or route, the alternate Sections of State Lands on each side for six miles, but the title to the same shall not vest in the Company except as the Road progresses, and not until thirty miles are completed, when the Company may sell one-half of the same within said thirty miles; and on the completion of thirty additional miles, then they may sell the balance, of their lands remaining unsold in the first thirty miles, and so on for each division of thirty miles until the Road is completed.

Sec. 16. *Be it further enacted,* That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the Public Lands included in the Trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and make such arrangements for the drainage of the swamp or overflowed lands, as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land, and the said Trustees shall encourage actual settlement and cultivation of

said lands by allowing pre-emptions under such rules and regulations as they may deem advisable: *Provided,* That in no case shall a pre-emption for more than one section of land be granted to any one settler.

SEC. 17. *Be it further enacted,* That as the Board of Internal Improvement recommended the construction of a navigable canal connecting the waters of the St. John's with those of the Indian River, the State Engineer is hereby authorized to make a final location of the same as soon as practicable, and furnish detailed estimates and plans for the information of persons desirous of engaging in the work, and invite bids for its execution for one year—the bidders to specify the amount for which they will do the work, and the mode and manner in which payments are to be made, whether in lands or money, or in portions of each. And the Trustees of the Internal said Fund, as the work progresses, the whole amount agreed upon by the terms of the contract: *Provided,* The entire cost shall not exceed Four Thousand Dollars in money and Four Thousand acres of land per mile: *Provided, further,* That the Trustees of the Internal Improvement Fund shall be of the opinion that this sum in money can be applied to said purpose without impairing the efficiency of the Fund for Railroad purposes.

SEC. 18. *Be it further enacted,* That the Capital Stock of any Railroad Company accepting the provisions of this Act, shall be forever exempt from taxation, and the Roads, their fixtures and appurtenances, including work-shops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the Roads, shall be exempt from taxation while the Roads are under construction, and for the period of thirty-five years from their completion—and that all the officers of the Companies, and servants, and persons in the actual employment of the Companies, be and are hereby exempt from performing ordinary patrol or militia duty, working on public roads and serving as jurors.

SEC. 19. *Be it further enacted,* That should any of the officers, or persons in the employ of any Railroad Company in this State, make any fraudulent statement of accounts, or make false issues or transfers of the Capital Stock or Bonds of any Railroad Company, or shall fraudulently apply any money or property in his charge, belonging to said Company, or in charge of said Company, to his individual use or benefit, or to the benefit of any other person, it shall be considered a felony, and on conviction in any Court having jurisdiction of the same, shall be punished by fine at the discretion of the Court, and imprisonment of not less than two nor more than ten years.

SEC. 20. *Be it further enacted,* That after the routes, indicated have been actually surveyed and adopted, and a plat therefor deposited in the office of the Secretary of the State, it shall not be lawful for any other Railroad to be built, cut, or constructed in any way or manner, or by any authority whatsoever, running laterally within twenty-five miles of the route so adopted, unless by said Company, or with the consent of the trustees of the Internal Improvement Fund and a majority of the Stockholders, at an annual meeting, on a Stock vote.

SEC. 21. *Be it further enacted,* That should the Government of the United States grant land to the State of Florida for the purpose of aiding in the construction of the lines of Railroad indicated, and their extensions, by general or special act, said lines of Railroad shall be entitled to all the benefits and advantages arising from said grant that the State of Florida would be entitled to by the construction of said lines of Railway and their extensions; and the Governor of the State is hereby authorized and required, should such an Act be passed by the Government of the United States, to direct said Railroad Companies to select said land, and, after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of land so selected, the number of each Section, fractional Section, or sub-

division, and take such other action as may be necessary to fully secure the grant of lands to said Railroad Companies, subject to all the conditions and restrictions of the Act of Congress making such grant.

SEC. 22. *Be it further enacted,* That it shall be lawful for the Board of County Commissioners of any County or the Mayor and Council of any City, or the Trustes of any Town, through or near which such Railroads or their extensions may pass, or in which they may terminate, and they are hereby authorized, to subscribe and hold stock in said Company, upon the same terms and conditions, and subject to the same restrictions as other Stockholders: *Provided,* It shall be first submitted to the vote of the legal voters of said County, City or Town, to be held and taken at such times and places, and in such manner, as said authorities respectively may appoint, whether or not stock shall be subscribed and taken; and if, when the vote be thus taken, it shall appear that a majority of the votes shall be in favor of such subscription, it shall thereupon be lawful for the Board of County Commissioners, City or Town Authorities, by agents by them appointed, to subscribe and take in such Company, such an amount of Stock as they shall determine; *Provided,* That in no case of County subscription the amount shall exceed fifty per cent. of the cost of construction through said County; and to issue the bonds of such County, City or Town, payable with interest at such times and places as they may deem proper, and dispose of the same for the payment of such subscription, pledging the faith and resources of such County, City or Town for the payment of such bonds and interest; and they shall from time to time levy and collect such a tax as shall be necessary to pay the installments of interest and the Bonds as the same become due, or to create a sinking fund for the gradual reduction of the same: *Provided,* That the rate of interest shall not exceed ten per centum per annum; or funds may be raised by such Board of County Commissioners, or City or Town Authorities, by

tax, in such sums or installments as will meet such subscription, and the receipt for the payment of such tax shall entitle the payers thereof, for every one hundred dollars so paid, to have one share or more, as the case may be, of the stock so subscribed by said County Commissioners, City or Town, in said Company, and which receipts shall be assignable. No Stock held by any County, City or Town, shall be assignable by said County, City or Town, until the bonds issued for the purpose of procuring funds for the payment of said County, City or Town subscription shall be paid, except in exchange for such bonds.

SEC. 23. *Be it further enacted,* That in the event of the disagreement between any Railroad Company accepting the provisions of this Act, and the Postmaster-General, as to the compensation to be paid per mile by the Governor of the United States, to said Companies for transporting the mail of the United States, on the routes indicated by this Act, the matter shall be settled by mutual agreement between the Postmaster-General and the Governor of the State, and the refusal on the part of any Railroad Company to perform the services required by the Post Office Department, for the compensation agreed on by the Governor and the Postmaster-General, shall subject said Company to a fine of one hundred dollars for each and every day they refuse to perform the said award, which shall be recoverable by an action of debt, by the Postmaster-General, but not if he be in arrears for more than one quarter's compensation to such Company.

SEC. 24. *Be it further enacted,* That no Branch Roads from the main line of Railroad, provided for by this Act, between the waters of Pensacola or Escambia Bay and the junction with the Florida Railroad, shall be made to the Northern boundary line of this State, until that part of the line between the Suwannee River and the Florida Railroad has been constructed: nor shall any such Branch Road be made to a point West of the Alapaha

River without the consent of all the Companies owning the several portions of the main line, and without the approval of the Trustees of the Internal Improvement Fund.

Sec. 25. *Be it further enacted,* That the completed portion of any Railroad authorized by this Act, shall carry the iron rails, spikes and plates or chairs required in the construction of any portion of the line indicated, at the uniform rate of two cents per ton per mile, and for such transportation shall receive in payment the Capital Stock of the Company for which the same was transported.

Sec. 26. *Be it further enacted,* That whenever any of the different Railroad Companies shall purchase and deliver to the County Treasurer, or to the City or Town Authorities, the Bonds issued by any County, City or Town, to pay the subscription of the Capital Stock of said County, City or Town, or any portion of them, the Treasurer of said County, City or Town shall transfer an equal amount of the Stock of said Company to said Railroad Company, and it shall be the duty of the Treasurer of the County, City or Town Authorities to cancel and deface the Bonds exchanged.

Sec. 27. *Be it further enacted,* That after the Railroad Companies indicated by the provisions of this Act, shall, for five consecutive years, pay six per cent. on the Capital Stocks paid in, and the interest on the bonded Debt, and apply the sum of one per cent. yearly to a sinking fund on said debt, the Trustees of the Internal Improvement Fund may apply under the direction of the Legislature, the annual income arising from said Fund to other purposes of Internal Improvement, or to the support of Schools, so long as the said Company shall continue to pay the same. But should any of said Railroad Companies thereafter fail to provide the interest upon their bonded debt, and one per cent. annually as a sinking fund, then said fund shall pay the deficiency on the interest account, from time to time as it may arise.

Sec. 28. *Be it further enacted,* That the right of way through the State lands for two hundred feet in width, is hereby granted to the different Railroad Companies on the routes indicated, with the right to cut timber, and procure necessary earth and stone, from the adjacent land, to construct and repair the same, and whenever it is necessary to construct turn-outs or side-tracks, that this privilege may be extended to one hundred feet on each side of the Road, and of such side track.

Sec. 29. *Be it further enacted,* That the alternate Sections of the Swamp and Overflowed Lands for six miles on each side may be granted by the General Assembly to such Railroad Companies, to be hereafter chartered, as they may deem proper, on their compliance with the provisions of this Act, as to the manner of constructing the Road and drainage, and the sale and transfer of the alternate Sections thus granted shall be in accordance with the provisions of this Act.

Sec. 30. *Be it further enacted,* That no Bonds shall be issued to the Companies under the provisions of this Act, in aid of any part of their Roads not completed at the end of eight years, from the passage of this Act, and any Company failing to grade twenty miles of their Road within four years from filing notice of their acceptance of the terms of this Act, shall forfeit all right to its benefits.

Sec. 31. *Be it further enacted,* That in addition to the Bonds authorized to be issued in the preceding Sections of this Act, there may be issued by the proper Railroad Companies, Bonds to the amount of One Hundred Thousand Dollars for a Bridge crossing the Choctawhatchie River, and like amount for a Bridge crossing the Apalachicola River; Also One Hundred Thousand Dollars for the structures necessary to cross from the West side of Nassau River to Amelia Island, and Fifty Thousand Dollars for the crossing of the Suwannee River—

which Bond shall be guaranteed and provided for in the same manner as those hereinbefore authorized: Provided, That said Bonds shall not issue except in payment of work done, and then only as the work progresses, upon the Certificate of the State Engineer that such work has been done, and the amount of Bonds issued is required for the payment thereof.

Sec. 32. *Be it further enacted,* That if any person shall, while in charge of a Locomotive Engine, or acting as the Conductor or Superintendent of a Car or train of Cars, or on the Car or train as a Brakeman, or employed to attend the Switches, Drawbridges, or signal Stations, on any Railway in this State, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction before any Magistrate, shall be punished by fine or imprisonment at the discretion of the Court.

(Passed the House of Representatives, December 29, 1845. Passed the Senate, January 2, 1855. Approved by the Governor, January 6, 1855.)

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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM.

RICHARD G. PETERS,
APPELLANT,
vs.
ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL, AND B. E. McLIN, TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, AND NEILL G. WADE AND THE SOUTHERN TIMBER & NAVAL STORES COMPANY, APPELLEES.

No. 49.

Appeal from United States Circuit Court, Northern District of Florida.

BRIEF OF WM. A. BLOUNT AND A. C. BLOUNT, JR., FOR APPELLEES, NEILL G. WADE AND SOUTHERN TIMBER & NAVAL STORES COMPANY.

THE WHITE PRINTING CO., PENSACOLA

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STATEMENT.

The Appellant filed in the Circuit Court *a quo* a bill of complaint against the Appellees, wherein he alleged that on May 24, 1893, the Governor of Florida approved an act theretofore duly passed by the Legislature of Florida,

entitled, "An Act to Incorporate the Atlantic, Suwannee River & Gulf Railroad Company, to Grant to such Corporation certain privileges, and to aid the Construction thereof;" that by the said Act, the said Railroad Company as grantee acquired the right to earn certain lands belonging to the State of Florida, but the legal title to which was vested in a body of men, created by the Legislature of that State, called the Trustees of the Internal Improvement Fund of Florida; that the grantee, or its assigns, performed the conditions upon which it was to acquire the lands mentioned, and thereby became entitled to a conveyance by the said Trustees of certain lands specified in the bill; that the rights of the said Railroad Company have passed to the Appellant: that the Trustees refused to convey the said lands to the predecessor in right of the Complainant, but for the consideration of about two hundred thousand dollars, conveyed to the Appellee, Neill G. Wade, who conveyed them to the Appellee, the Southern Timber & Naval Stores Company. The bill seeks to obtain the lands from the Southern Timber & Naval Stores Company, or, in default thereof, the value of the lands from the Trustees. The Appellees filed demurrers, which were sustained, and the bill dismissed, and this appeal taken.

The foregoing are not all the allegations of the bill, but are all which are necessary to be stated here for the purposes of the discussion which we shall make. The Counsel for the Trustees of the Internal Improvement Fund will file a brief discussing questions which we do not discuss. If our contentions be correct, no others need be considered.

ARGUMENT.

The Bill was properly dismissed.

The right of Appellant to the lands in controversy depends, according to the bill and argument for Appellant, upon,

1. A grant by the Legislature by the before-mentioned Act to the Atlantic, Suwanee River & Gulf Railroad Company of the right to acquire such lands, and the subsequent acquisition, by the performance of conditions, of the equitable title to them by that Railroad Company, or its assigns; or,

2. A contract by the Trustees of the Internal Improvement Fund with that Railroad Company, or its assigns, to convey the lands to it when it performs certain conditions and its performance of those conditions; or

3. An estoppel to deny such grant or contract.

There was, however, no grant by the Legislature, and no contract by the Trustees and no estoppel.

I.

There was no grant by the Legislature of Florida to the Atlantic, Suwanee & Gulf Railway Company of any lands, or of the right to earn any.

It is true that the Act of May 24, 1893, in its body, purports to give the right to earn lands, but that Act was ineffectual to accomplish that purpose, because under the ruling of the Supreme Court of Florida, in order that an Act of the Legislature granting lands to a Railroad Company, shall be operative as such grant, the title must be broad enough to cover the grant, and in this instance the title of the Act in its passage through the Legislature, as shown by the Journals of the Legislature, was not broad enough.

The title of the Act, as contained in the printed Session Laws, was,—

"An Act to Incorporate the Atlantic, Suwannee River & Gulf Railway, to Grant such Corporation certain privileges and to aid the construction thereof." (Session Laws of Fla., 1893, pp. 223-229.)

The bill, which was passed by the Legislature, bore, as shown by the Journals, at all stages of its passage, the title,—

"A Bill to be Entitled an Act to Incorporate the Atlantic, Suwannee River & Gulf Railway Company."

The Constitution of Florida provides, (Art. III) as follows:

"Section 16. Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title."

Under this provision, the last mentioned title was not sufficient to cover the grant of lands contained in the body of the Act.

Wade, et al, vs. Atlantic Lbr. Co., 51 Fla., 632-640.

This cited case was brought by the Atlantic Lumber Company, assignor of the plaintiff, against these same appellees, to obtain the same relief sought in the bill in this cause, and if the decision in that case be controlling, then no further discussion is necessary upon our contention that the Act of the Legislature relied upon by appellant as a grant of the lands in controversy was not effective to make such grant.

The case of Wade, et al, vs. Atlantic Lumber Company, 51 Fla., 632-640, is binding upon this appellant and upon this Court and controls this case.

It controls, because,—

A. It fixes the status of the Act of May 24, 1893, by declaring it to be ineffective to convey the lands sought in this suit, and the status so fixed is binding upon this Court.

B. If it does not fix the status of the Law, it determines the Law of Florida to be that when the Journals of the Florida Legislature state affirmatively a fact, the Journals control; that the Court will take judicial notice of the

Journals, and that under the Florida Constitution a title "To Incorporate a Railway Company" is not broad enough to cover a grant of lands to that Railway Company. This Court will follow these determinations of the Florida Courts, and will, itself, if necessary, take judicial notice of and inspect the Journals of the Legislature of 1893, and will then find that the only bill attempting to grant lands to the Atlantic Lumber Company bore, in all stages through the Legislature, a title which would not embrace a grant of lands, and will find, by applying the above principles, that the complainant has no legislative rights to the lands in controversy.

A. The status of the Law of May 24, 1893, is fixed by the case mentioned, to-wit: Wade, et al, vs. Atlantic Lumber Company, 61 Fla., 632-640.

The Supreme Court of Florida, after the inspection of the Journals, and finding that they showed conclusively the title under which the Legislative bill passed through the Legislature, decided that that particular title was not broad enough to embrace a grant of land, and, therefore, decided that the Act was inoperative to convey any right to lands.

This then is the Law of Florida, as determined by its highest appellate tribunal, and, therefore, is the Law in this Court as to the status of that Act.

This Court is bound by the decision of the Florida Supreme Court as to whether a bill was so passed as to conform to the Constitutional requirements and thus become a law.

"As a matter of propriety and right, the decision of the State Courts on the question as to what are the Laws of the State is binding upon those of the United States. But the law under consideration has been passed upon by the Supreme Court of Illinois, and held to be invalid. This

ought to have been sufficient to have governed the action of the Court below."

Ottowa vs. Perkins, 94 U. S. 268.

"The duty of a Federal Court (is) to follow the rulings of the highest court of a State on the question whether a particular enactment found in the printed Statutes had been passed in such a manner as to become, under its Constitution, a law of the State."

"The Circuit Court of the United States should have regarded the decision of the Supreme Court of North Carolina in Bank vs. Commissions, Commissioners vs. Snuggs, Rodman vs. Washington, Commissioners of Wilkes County vs. Call, and Commissioners vs. Payne, above cited, as controlling upon the inquiry whether the legislative enactments of 1868, 1879 and 1881 were passed *in such manner* as to become, under the Constitution, *laws* of the State."

Wilkes County vs. Coler, 180 U. S. 524 and 533.

"It is unnecessary to enter upon an examination of the rulings in the different States upon the question whether a Statute duly authenticated, approved and enrolled, can be impeached by resort to the Journals of the Legislature or other evidence, for the purpose of establishing that it was not passed in the manner prescribed by the State Constitution. The decisions are numerous, and the results reached fail of uniformity. The Courts of the United States necessarily adopt the adjudication of the State Courts upon the subject. South Ottawa vs. Perkins, 94 U. S. 260; Post vs. Supervisors, 105 U. S. 667; Railroad Co. vs. Georgia, 98 U. S. 359."

In re Duncan, 139 U. S., 455.

"Whether Statutes of a Legislature of a State have been duly enacted in accordance with the requirements of the Constitution of such State, is not a Federal question, and the decision of State Courts as to what are the Laws of the

State is binding upon the Courts of the United States. South Ottawa vs. Perkins, 94 U. S. 260, 268; Post vs. Supervisors, 105 U. S. 667; Norton vs. Shelby County, 118 U. S. 425, 440; Railroad Co. vs. Georgia, 98 U. S. 359, 366; Baldwin vs. Kansas, 129 U. S. 52, 57."

Leeper vs. Texas, 139 U. S. 467.

The appellant answers this position and these citations by asserting that the binding force upon this Court of the decisions of the Supreme Court of Florida, is limited to cases of construction of the Florida Constitution, or Statutes, and does not extend to the decisions of that Court upon the existence of a Statute, or a part thereof, and that this Court cannot take notice upon the demurrer to the bill in the Court below of this decision of the Florida Court.

The contention of appellant is directly in the teeth of decisions of this Court, wherein this very question of the existence of a State Statute, dependent upon whether it was passed in accordance with the State Constitutional requirements, has been involved, and this Court has in every case decided that it was bound by the decisions of the State Supreme Court.

"Observe that the issue is not as to the construction, meaning or scope of a Statute, but whether that which purports to be a legislative enactment ever became a law for any purpose. May a Federal Court disregard the decisions of the highest Court of the State holding that such enactment, in the form of a Statute, was never passed so as to become, under the State Constitution, a Law? These questions have been so distinctly answered by this Court in cases heretofore decided, that a discussion of them upon principle is unneccessary."

Wilkes County vs. Coler, 180 U. S. 519.
In re Duncan, 139 U. S. 455;
Leeper vs. Texas, 139 U. S. 467;
Ottawa vs. Perkins, 94 U. S , 268.

The appellant, however, says that in his bill in this case, he presents new allegations as to the steps accompanying the passage of the bill which the Supreme Court of Florida did not have before it, and which require a finding by this Court that the Legislative bill was regularly and constitutionally passed, so far as it purports to grant lands.

But the Supreme Court of Florida having decided that the Legislature did not pass that portion of it which granted lands, this Court cannot now open that question. If it could do so upon the demand of this suitor, it could upon the demand of every other suitor, and if it differed from the Florida Supreme Court, there would be one law as to one citizen, and another Law as to others,—a result not only not to be tolerated, but pronounced by this Court not to be attainable

"That which purports to be a law of a State is a law, or it is not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties. It would be an intolerable state of things if a document purporting to be an Act of the Legislature could thus be a law in one case and for one party, and not a law in another case and for another party; and law to-day, and not a law to-morrow; a law in one place, and not a law in another in the same State. And whether it be a law, or not a law, is a judicial question, to be settled and determined by the Courts and Judges."

Ottawa vs. Perkins, 94 U. S. 267.

The appellant, also, urges that this Court has, itself, put a limit to its non-interference with the decisions of the State Supreme Court that a Law has not been validly passed, in that this Court holds that in order that it may be bound by the State Court's decision rendered upon evidence, it must have the same evidence before it thus (appellant's urge), implying that if the evidence be different the judgment of this Court may be different from that

of the State Court. Appellant quotes as to this, (p. 78 of his brief), the language of this Court in South Ottawa vs. Perkins, 94 U. S. 260, as follows:

"It would be a very unseemly state of things, after the Courts of Illinois had determined that a pretended Statute of that State is not such, never having been constitutionally passed, for the Courts of the United States with the same evidence before them, to hold otherwise."

If this Court, by the language quoted, intended to say that after the State Supreme Court has passed upon the question of the due passage of Law, that question can be reopened and decided *contra* by a United States Court whenever a new litigant can get additional evidence, then the holding is entirely irreconcilable with the decisions in the cases which we have cited, because those cases decide unqualifiedly that this Court is bound by the decision of a State Court in fixing the Status of the Law,—a decision necessarily compounded of law and evidence,—and also as shown above, that when the status has once been fixed, it cannot be changed by any Court other than the Court which fixed it.

This Court has never held that after the State Supreme Court had decided an act not to be validly passed, any Court of the United States would permit the matter to be again questioned before it by the introduction of testimony of any kind. To do so would be to bring about the very evil reprehended in Ottawa vs. Perkins, 94 U. S. 287. What the Court meant by the language quoted was, that in that case the same evidence was before it that was before the State Supreme Court, and that it would not in such case do other than follow the State Court. It did not decide, and has never decided, that if there had been other evidence, it would have considered it, and determined the question as if *res integra*.

Even if, however, new evidence could be admitted in the

Court below, and passed on by this Court, there was no new admissible evidence alleged in the bill of complaint to exist. That bill alleged certain facts as to the existence of the title of the legislative bill, during the passage of that bill through the Legislature. Such facts, however, were in contradiction of the Journals, which showed that the title of the bill during the several stages of its passage was,—

"AN ACT TO INCORPORATE THE ATLANTIC, SUWANNEE RIVER AND GULF RAILROAD COMPANY," and not "AN ACT TO INCORPORATE THE ATLANTIC, SUWANNEE RIVER AND GULF RAILROAD COMPANY, AND TO GRANT SAID CORPORATION CERTAIN PRIVILEGES AND TO AID THE CONSTRUCTION THEREOF."

The Supreme Court of Florida has decided that even though the Constitution may not require the statement in the Journals of certain facts connected with the passage of a bill, yet, that when the Journals do affirmatively show such facts, the statement of the Journals is indisputable and uncontrollable.

> Wade vs. Atlantic Lumber Co., 51 Fla., 632-40;
> State vs. Green, 36 Fla., 161, 172;
> State vs. Brown, 20 Fla., 421.

This being true, and the Journals in their statement of the passage of the bill under consideration having shown that it bore, during its passage, the more restricted title above, there can be no other evidence, and, therefore, the evidence before this Court is necessarily the same evidence as was before the State Court, that is, the Journals alone.

B. If, however, the contention of appellant that only a construction of the State Laws or Consti utions by the highest State Court, is binding upon this Court, were cor-

rect, yet the result is the same, because the decision that the alleged grant of lands to the appellant was invalid depended upon two constructions of the Constitution of the State of Florida; one, a construction of that provision of the Constitution which required each House to keep a Journal of its proceedings, (Article 3, Section 12,) and a determination that that provision made affirmative statements of the Journals uncontrollable, and, two, a construction of that provision of the same Constitution, (Article 3, Section 16,) providing that "Each Law enacted in the Legislature shall embrace but one subject, and matter connected therewith, which subject shall be briefly expressed in the title," and a determination that the particular title was not broad enough to cover a grant of lands. Both of these are constructions of the Constitution of Florida, by its highest Court, and under the uniform decisions of this Court and by the admissions of appellant, are binding upon this Court.

If the Court below then could properly hold that it was not bound by the decisions of the Supreme Court of Florida, as to the status of this Act, it would have to examine the evidence before it, and applying the law, arrive for itself at its own finding, as to the due passage of the law. The only evidence, however, would be the Journals themselves, for they, as we have shown, control. These Journals show that the title to the Act, as it passed through the Legislature, was the restricted title above mentioned, and an application of the constructions of the Constitution just above set forth, required the Court to hold that the Act did not cover a grant of land.

The appellant, however, says that even if our foregoing contentions be true, yet, that they were not properly before the Court below upon demurrer, because the bill of complaint alleged *facts* showing that the legislative bill,

throughout its passage, bore the title which covered a grant of land, and that the demurrer admits such facts. But it can be demonstrated that,

United States Courts will take judicial notice of the decisions of the highest State Court, holding an act of the Legislature to have been passed in accordance with the requirements of the Constitution of the State, or the contrary, and of the Legislative Journals of the State whose Courts take such notice, and will follow such decisions, and will give to the Journals the effect given by the State Courts to them, and both the State Courts of Florida and this Court, will take such notice upon demurrer.

The United States Courts will take judicial notice of the decisions of the State Courts fixing the Status of Acts alleged to be Laws. In every one of the cases above cited by us, decided by this Court, it has, without requiring evidence, taken judicial notice of such decisions, and from them determined the validity or the invalidity of the Law in question. This necessarily results from the settled Law of this Court that it will take judicial notice of the Law of the State in which a question under that Law arises. A Law of a State is legislation, which is, under the Constitution of that State and the decisions of its Courts, valid. The fact that a Legislature passes a bill and it is printed, does not make it a Law. If it be not passed in the manner prescribed by the Constitution, or if it conflicts with any Constitutional provision, then it is not Law. The final arbiter as to whether it has been so passed or not, and whether it is so in conflict or not, is the highest Court of the State. When it has decided, then it has de-

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termined whether it is law or not law, and necessarily this Court, taking notice of Law *vel non*, must take notice of what the State Court has decided to be Law *vel non*, for it is law or not, according as the State Court decides. In other words, so far as this Court is concerned, the State Court is part of the Law making power when the existence of State legislation is submitted to it, and the Law as it comes from its hands is the Law.

"And whether it be a law, or not a law, is a judicial question, to be settled and determined by the Courts and Judges."

"On general principles the question as to the existence of a law is a judicial one, and must be so regarded by the Courts of the United States."

South Ottawa vs. Perkins, 94 U. S., 267 and 268.

The State Courts of Florida will take judicial notice of the Legislative Journals of the State and of their contents.

State vs. Brown, 20 Fla., 407 and 220;
State vs. Green, 36 Fla., 168 and 170;
Wade vs. Atlantic Lbr. Co., 51 Fla., 628, 632 and 638.

And will take such notice upon demurrer.

Ibid,—

And the United States Courts will take judicial notice of them.

South Ottawa vs. Perkins, 94 U. S., 260 and 268.

And will take such notice upon demurrer.

Ibid,—

The Court says, in the case last mentioned,

"In our judgment it was not necessary to have raised an

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issue on the subject, except by demurrer to the declaration."

Ibid, p. 268.

If, then, upon the hearing of the demurrer to this bill, the Court below took judicial notice of the journals, it found that these journals showed that the title of the bill did not include the provision for aid of the corporation, which alone would have included a grant of land. It then applied the law that the statements of the journals could not be gainsaid by any intrinsic evidence, and it thus necessarily found that the evidence embraced in the allegations of the bill of complaint that *in fact* the legislative bill had the full title throughout its passage, could not be admissible, because in conflict with the journals, and it was, therefore, compelled to find that only that part of the bill, covered by the restricted title, was constitutionally passed.

. . . . . .

We have not adverted to the case of Field vs. Clark, 143 U. S., 649, relied upon by appellant, because the Court, in that case, did not have before it the question of State Legislation, or State decision, relative to the conclusiveness of journals, or of the bill as enrolled and signed, but only had before it a construction of the Federal Law. This Court has made that plain, as follows:

"To avoid misapprehension it may be well to add that even if the decisions in North Carolina rested npon grounds inconsistent with the principles announced in *Field vs. Clark* as applicable to the constitutional provisions relating to acts passed by Congress, it would be the duty of a Federal Court to follow the rulings of the highest Court of a State on the question whether a particular enactment found in the printed Statutes had been passed in such a manner as to become, under the Constitution, a law of the State."

Wilkes Co. vs. Coler. 189 U. S. 524.

The Constitution of the United States does not prevent a State from declaring its Legislative Journals conclusive of the manner of the passage of an Act of the Legislature.

This drives the appellant to his last contention, on this branch of the argument, which is, that the decisions of the Florida Supreme Court holding that the journals are conclusive, are in conflict with the Fourteenth Amendment of the Constitution of the United States, because it deprives the person claiming under the act of the opportunity to show the facts relating to its passage, and thus to show that it was passed in conformity with the requirements of the State Constitution, and that such deprivation is of property without due process of law.

The Supreme Court of the United States has expressly decided this point against the contention of the appellant. It says:

"Of course any particular State may, by its Constitution and Laws, prescribe what shall be conclusive evidence of the existence or non-existence of a Statute."

This was said of the very question involved in this case.

Town of South Ottawa vs. Perkins, 94 U. S., 269.

In that case, this Court applied the decisions of the Supreme Court of Illinois, which held that it was "necessary to the validity of a Statute that it should appear by the Legislative journals that it was duly passed in the manner required by the Constitution," (p. 263,) that is, that there could be but one kind of evidence of the validity of the passage of the act,—the journals,—and the silence of those journals was conclusive evidence of the invalidity of the act.

This Court has said.

"Whether Statutes of a Legislature of a State have been

duly enacted in accordance with the requirements of the Constitution of such a State, *is not a Federal question*, and the decision of State Courts as to what are the laws of the State is binding upon the Courts of the United States."

Leeper vs. Texas, 139 U. S., 467.

Of course it is clear that the Constitution makers, or Legislature, can make a rule of evidence which will exclude all except certain evidence of a fact. This is done by the Statute of Frauds, which requires written evidence of certain contracts, and excludes any other. So, in the conveyance of lands, certain forms of writing are required, and all else declared void. Could it be seriously contended that, because two men in fact contracted for the sale of personal property, the Statute of Frauds requiring certain proof of it is void, or because one man has intended to convey land to another, the statute which declares the conveyance ineffective because not in writing, or not under seal, or not witnessed, is void?

And yet, these cases are not as clear as the legislative right to prescribe the effect and conclusiveness of evidence of the gratuity which it holds out to each beneficiary of a legislative grant. The passage of the act is purely gratuitous, and obviously the grantor has the right to state the terms upon which its gift shall take effect, and as to what shall be evidence of its having been made. The people of the State have also the right to prescribe the manner in which their agents, the legislators, shall legislate, and the evidence by which it shall be proved that they have legislated and what legislation has been passed. Even a private principal has the right (there being no holding out to the public and no question of estoppel) to confine in the instrument creating the agency the power of the agent, and to prescribe the manner in which and the character of the instrument by which he shall execute his agency.

The assertion of the counsel that there is a deprivation

of property begs the question, for the question is whether the act was passed in a manner to confer property. If validly passed, (and its terms accepted,) it became property in the sense that it became a contract, but if not validly passed, it is not property, and no extent of acceptance of it, or action under it, could make it valid, as property.

Town of South Ottawa vs. Perkins, 94 U. S. 267, 269.

The authorities (pp. 79 and 80, appellant's brief), showing that the Legislature cannot make tax deeds conclusive evidence of the regularity of the proceedings essential to the divestiture of the owner's title, are not applicable here.

In those cases, the owner was possessed of property. The Legislature said that he should be divested of it only in a particular manner, and it is not competent for the Legislature to say that an officer failing to perform the conditions authorizing him to divest the title, and thus doing wrong, could, by doing another wrong, (issuing an unauthorized deed), make conclusive evidence that the wrong which had been done was right.

There is, however, no analogy between this and the requirements that a gratuity given by the Legislature shall be evidenced in a particular way, or that a statement in the journals of the proceedings of the Legislature shall be uncontrollable by other instruments or evidence.

When the appellant contends that he is deprived of the opportunity to show the facts, he ignores the principle that juridically speaking that does not exist,—is not a fact,—which is not not susceptible of legal proof. Whatever may have been the circumstances and conditions relating to the title of the bill as it passed through the Legislature, the only title susceptible of proof under the Law of Florida is the title shown by the journal, since the journal affirmatively shows a title. Any other title than that

shown is not a *fact*, and the deprivation of the opportunity to show such title is not the deprivation of an opportunity to show a fact.

II.

The Trustees of the Internal Improvement Fund did not, and could not, make any contract with the Atlantic, Suwanee River and Gulf Railroad Company, predecessor of appellant, to convey to it the lands in controversy.

The bill of complaint fails to show a contract made by the Trustees. It merely shows that the Board required its engineer to inspect portions of the road constructed by the Railroad Company, approved the plats and details of construction filed by the Company, and issued to it certain certificates declaring the Company to be entitled to locate a certain number of acres of land.

It is clear that their causing their engineer to inspect, and their approving plats and details of construction, did not constitute a contract.

It is equally clear that their making the certificates did not. These certificates did not contain, and were not intended to contain, the result of any negotiation, or bargain between the Railroad Company and the Trustees. They were merely steps in the progress of the Company in getting title to specific lands under and by virtue of the provisions of the Act of May 24, 1893. They were the doings of officials of the State, carrying out the assumed will of the State. The certificates (p. 11 Tr.), showed that what was done was done because of the assumed command of the Legislature, and not through any voluntariness of the Trustees. The preambles to the certificates set forth the passage of the Act; that the Act had granted ten thousand acres per mile of constructed road; that "under Section 10 of the

Act, it is provided that the said Atlantic, Suwanee River & Gulf Railroad Company, its successors and assigns, shall have the privilege of acquiring and having from the Trustees of the Internal Improvement Fund a certificate authorizing and entitling it to locate the lands which it may at any time have earned and become entitled to as aforesaid;" that under said Section, upon the filing of plats and surveys, showing lands earned and located, the Trustees should execute deeds conveying the lands, so earned; that the Railroad Company had complied with the conditions precedent: and that, therefore, the Trustees certified that it was entitled to locate a given number of acres of land.

It scarcely seems necessary to argue that this constituted no contract by the Trustees to convey the lands, by virtue of any power which they may have had to determine the advisability of selling and conveying the land of the Trust, but was solely an execution of the powers and duties conferred and imposed upon them by the Act of May 24, 1893. If, however, this Act was void, the acts of the Trustees done in pursuance thereof could, in themselves, confer no rights, for they were dependent for their effect entirely upon that Act.

But even if the Trustees had endeavored to contract to convey these lands, they did not have the power. Whatever may have been the right of the Legislature to convey them, the Trustees had no power to do other than *sell* them *for such purposes* as are defined in the Act of Florida of January 6, 1855, known as the Internal Improvement Act. That Act, (set forth as an appendix to appellant's brief) vested the lands in the Trustees for certain purposes. (Section 1.) Those purposes were the aid of such Railroads as were designated by the Legislature, and the drainage of the lands. The Trustees were invested "with the power to sell and transfer said lands to the purchasers, and receive payment for the same, and invest the surplus money aris-

ing therefrom," etc., (Section 2,) and they are directed, "to fix the price of the public lands included in the trust. . . . and make such arrangements for the drainage of the swamp and overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land." (Section 16.) There is no power given to dispose of them for other purposes than those stated above, and it was clearly beyond their power to contract to give them to a Railroad Company.

III.

There is no estoppel against questioning the validity of the Act of May 24, 1893.

This Court has concluded the question by it decisions in

South Ottawa vs. Perkins, 94 U. S. 260-8;
Wilkes County vs. Coler, 180 U. S. 506-520.

In the first case this Court, passing upon the contention that rights had been acquired by *bona fide* holders of negotiable bonds in reliance upon an Act of the Legislature, and that the Town of South Ottawa had paid interest upon the bonds, and that, therefore, there was no estoppel against a reliance upon the invalidity of the Law authorizing the issue of the bonds, said,—

"We cannot assent to this view. There can be no estoppel in the way of ascertaining the existence of a Law. That which purports to be a law of a State is a law, or it is not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties."

South Ottawa vs. Perkins, 94 U. S. 267.

And this doctrine is approved in the latter case.

Respectfully submitted,

W. A. BLOUNT,
A. C. BLOUNT, JR.,
Attorneys for Appellee,
Neill G. Wade and Southern Timber & Naval Stores Co.

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 49.

RICHARD G. PETERS,
APPELLANT,

vs.

ALBERT W. GILCHRIST, A. C. CROOM, W. V. KNOTT, PARK TRAMMELL AND B. E. McLIN, TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, AND NEILL G. WADE AND THE SOUTHERN TIMBER & NAVAL STORES COMPANY, APPELLEES.

SUPPLEMENTAL BRIEF

OF

WILLIAM A. BLOUNT AND A. C. BLOUNT, JR., Solicitors for NEILL G. WADE AND SOUTHERN TIMBER & NAVAL STORES COMPANY, in reply to the Supplemental Appendix filed in this Court on November 7, 1911, to the Brief for Appellant.

Forgetfully, we omitted, at the hearing of this cause, on November 8, 1911, to ask permission to file this brief in reply to a brief which was then only just filed, but we now

ask such permission, and trust that the Court will grant the leave, and consider the suggestions of the brief.

We do not desire to occupy, except in small part, the ground occupied in the briefs filed for the Trustees of the Internal Improvement Fund and for Wade and the Timber & Naval Stores Company, but to offer these suggestions in addition thereto.

The circumstances of this case do not bring it within the exceptions to the rule announced by this Court, that it will be bound by the decision of the highest Court of a State upon the existence or construction of the Constitution and Statutes of such State.

Those exceptions are in cases where the highest Court of the State has changed its position as to such existence or construction, and where the State Court has made no decision upon those subjects, prior to the acquisition of rights under Statutes thereafter passed upon by the Court.

Necessarily, as this Court has said, the primal determination as to whether a right has vested in an individual, or a contract has been made with him, lies with this Court. This Court, however, has recognized that despite this final power resident in it, propriety requires that it shall ordinarily hold the decisions of the highest Court of a State, upon the existence or construction of its Statutes, to be binding, and thus makes an exception to the general rule. But it makes exceptions to this exception in the two cases above mentioned, such exceptions being founded upon the equity of the individual cases to which they are applicable.

This being true, obviously, in order to except a given case out of the general rule of comity mentioned, the equitable circumstances must exist. The circumstances, usually given effect to by this Court, are a well settled construction or recognition by the State Courts, or by the

State authorities, or by the people, or all three, prior to the time of the acquisition of rights of a person claiming under, or adverse to, a Statute in question.

We need not cite decisions upon this point, because the supplemental appendix of the appellant admits it, (p. 18,) and the principle seems to run through all the decisions of this Court.

The facts of this case do not show any settled construction or recognition, such as is mentioned, nor show any strong equity for the appellant and his predecessors in claim. There is no claim of a construction or recognition by the Courts, and none by the public, and the acts relied upon as constituting a construction or recognition by the State authorities are meagre. We, of course, ignore the issuance of certificates by the Trustees, because they were the last act done by them, and nothing could have been done by the appellant and his predecessors in reliance upon the issuance of such certificates. The only acts outside of such issuance are the requirement by the Trustees that the five miles sections of the road of the Railway Company should be inspected by the Trustees' engineer, and the requirement that the construction of the Railroad should be in conformity with plans and details filed by the Railway Company and approved by the Trustees. These acts, however, did not amount to a construction by the Trustees, or an affirmance by them, of the validity of the Act. They were done at the request of the Railway Company itself. It was as capable of making a construction of the Act, or of deciding upon its validity, as the Trustees, and the Journals of the Legislature, and the prior decisions of the Supreme Court of Florida, were equally open to each.

There is then, no such element of equity and reliance as is required by the decisions to give the appellant an opportunity of saying that this Court should not be bound by the decision of the Supreme Court of Florida, in the case of

Wade vs. Atlantic Lbr. Co., 51 Fla., 638.

There is neither allegation nor proof of any reliance upon anything done by the State or any of its authorities.

Independent of any effect of the decision of the Supreme Court of Florida, holding that the Act of May 24, 1893, was not constitutionally passed, this Court will, in the exercise of its own judgment, arrive at the conclusion arrived at by that Court.

The Supreme Court of Florida, in Wade vs. Atlantic Lumber Company, 51 Fla., 638, had before it the question as to whether the Act of May 24, 1893, was passed with the title, "An Act to Incorporate the Atlantic, Suwanee River & Gulf Railway Company; to Grant to said Corporation Certain Privileges, and to Aid the Construction thereof," which appeared in the printed bill, signed by the officers of both Houses and by the Governor, or with the title, "An Act to Incorporate the Atlantic, Suwanee River & Gulf Railroad Company." We shall call the former the full title, and the latter the restrictive title.

The Legislative Journals show that the bill was introduced in the House, and read the first time by its title, referred to a Committee, reported back by that Committee, read the second time, referred to the Committee on Engrossed Bills, reported back by it, and passed by yea and nay vote on the third reading, all under the restrictive title; that it was received by the Senate from the House, read in the Senate and passed by the Senate and certified to the House all under the restrictive title, and that for the first time it appeared in either House under the full title, in the report by the Joint Committee on Enrolled Bills. The above facts are shown in pages 1 to 13, inclusive, of the supplemental appendix to appellant's brief.

From this it will appear that the title of the bill during its whole passage, from the time of its introduction until and through its third reading and passage, was the restrictive title, and that the full title no where appeared until after the bill had been passed. Clearly, then, if the title of the bill is an essential part of it, the bill was passed with the restrictive title and not with the full title.

The only attempt in the bill of complaint to escape the statements in the Journals is, by allegations that the bill actually, *upon the inside*, bore, through all its stages, the full title, and that by carelessness, the restrictive title appeared upon the back. This, however, is an admission that the bill was passed with the restrictive title, because the Legislature passed the bill by its title. Under legislative procedure, when the bill was introduced it bore upon its back the restricted title; the Reading Clerk read that to the Legislators present; it was printed in the daily Journal, which, together with the Calendar, showing its introduction, was placed, the next legislative day, upon the desks of the Legislators, and the Journal was spread wide-cast throughout the State. Thus the Legislators and the public knew only that a bill with the restrictive title had been introduced, and was on its legislative way. Neither the Legislators nor the public, were informed by the title that there was anything embraced in the bill granting lands of the State The same thing is true of each subsequent legislative step, for while it may be a fact that the bill concealed inside the full title, yet, every dealing with it by the Legislature was with it as a bill simply to incorporate a railroad company. When the bill was read the first time by its title, and the third time by its title and passed, the passage was not of the bill with the concealed title, but the bill with the open title, and was effective only as to the open title. This being true, every allegation of the bill on this point is entirely immaterial, and fails to contradict the

Journals, even though such contradiction were permissible under the Law of Florida. The Supreme Court of Florida then, was correct in holding that the bill as passed did not, in its title, contain anything except the provision for the incorporation of the Atlantic, Suwanee River & Gulf Railway Company, and this Court will, upon the same reasoning and upon the same facts, hold in the same way.

The decision of the Supreme Court of Florida that the restricted title was not broad enough to cover a grant of lands, was right in principle.

If this Court does not hold the decision upon this point to be binding upon it, and goes into an independent examination, it will, we think, arrive at the same conclusion that the Supreme Court of Florida arrived at. We will not discuss this question, except to refer this Court to the reasoning in the decision of Wade vs. Atlantic Lumber Company, 51 Fla., 638, and to the discussion of the point by the attorney in this Court for the Trustees, in his brief, pages 68 to 74, inclusive.

This Court, of course, with the leaning which it has indicated that it will always have towards the construction of a State Constitution by the highest Court of that State, will hesitate before departing from such a pronounced holding as that in the Wade case.

The bill does not show that the appellant, or any of its predecessors in title, ever acquired a right to specific lands, and this being a bill to declare a trust in specific lands, the Court below was right in sustaining a demurrer to it.

Under Section 10 of the Act of March 3, 1893, (p. 5 of brief for appellant,) the grantee in that Act was not entitled

to locate any lands until after the Trustees had issued to him a certificate authorizing and entitling him to locate the lands which had been earned. Necessarily, therefore, it became incumbent upon the appellant, or his predecessors, to show that he had received such a certificate, and in pursuance thereof, located the lands. The bill of complaint falls far short of showing this fact. The only reference to the acquisition of the certificates is to be found in paragraphs 14 and 16 of the bill of complaint, (Tr. pp. 11 and 13.) The allegations in the first of these paragraphs is that a certificate was applied for, and the Trustees satisfied with the proof as to the construction of five miles of the railroad, and thereupon, "it was ordered that the salesman prepare certificates, instruments, or conveyances, embracing in the aggregate fifty thousand acres of land, certifying that said Railway Company, its successors and assigns, were entitled to locate the same, and to deeds of the same when located; that said certificates, instruments or conveyances . . . . . are, except as to numbers only, in words and figures as follows, that is to say." There then follows a certificate, *unsigned* by any of the Board of Trustees. Evidently, this is no allegation that certificates had issued, such as entitled to a location of lands. It is said, "it was ordered;" but it is not stated that it was ordered by the Trustees. And the implication would be that it was not so ordered, because none of them signed the certificate. The certificate being a condition precedent, and not having been signed by the Trustees, the grantee did not obtain a title, equitable or otherwise, to specific lands, although it might have obtained a right to a mandamus to compel the Trustees to issue these certificates.

In paragraph 16, the same omission as to a designation of the authority which ordered the issuance of the certificates is found, and it is said that the certificates issued for the fifteen miles mentioned in that paragraph were "in

substantially the same form as those issued on December 9, 1893," that being the date of the certificates mentioned in paragraph 14. This is thus a clear failure to show any right to specific lands, and, of course, a failure to show a right to maintain a bill declaring a trust in specific lands, and whatever proceeding might lie against the Trustees, clearly none would lie against the other defendants, to obtain from them the specific lands deeded to Wade by the Trustees.

W. A. BLOUNT AND
A. C. BLOUNT, JR.,
Solicitors for Neill G. Wade and Southern
Timber & Naval Stores Company.